HIGH COURT OF DELHI
SHER SHAH ROAD, NEW DELHI

(2)

No. 3348-60/DHC/Gaz/G-2/Judgment/2019 Dated: 13th June, 2019.

1215

From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.

To,

1. The District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
3. The District & Sessions Judge (South), Saket Courts Complex, New Delhi.
4. The District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
5. The District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
6. The Principal Judge, Family Court (HQs), South-West, Dwarka, Delhi.
7. The District & Sessions Judge (South –West), Dwarka Courts Complex, New Delhi.
8. The District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
9. The District & Sessions Judge (North), Rohini Courts Complex, Delhi.
10. The District & Sessions Judge (South-East), Saket Courts complex, Delhi.
11. The District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
12. The District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
13. The District & Sessions Judge- Cum- Special Judge (PC Act) (CBI) Rouse Avenue Courts Complex, New Delhi.

Subject: Order dated 11.09.2015 in RFA No. 78/2014 and order dated 07.09.2016 passed by Hon'ble Mr. Justice J.R. Midha in CM No. 32885/2016 in RFA No. 78/2014 titled "New Delhi Municipal Corporation Vs M/S Prominent Hotels Limited"- regarding.

Sir/Madam,

I am directed to request you to kindly download the judgment/order dated 11.09.2015 in RFA No. 78/2014 and the order dated 07.09.2016 modifying the order dated 11.09.2015, passed by Hon'ble Mr. Justice J. R. Midha in CM No. 32885/2016 in RFA No. 78/2014 titled "New Delhi Municipal Corporation Vs M/S Prominent Hotels Limited" from the official website of this Court i.e **delhihighcourt.nic.in** and circulate the same amongst all Judicial Officers working under your control for information and necessary compliance.

Yours faithfully,

(Jugal Kishore)
Assistant Registrar (Gazette-I)
for Registrar General

P.K.
Offg DRSJ/HQs
LD.OIC/GENRL.
12.06.19

$~41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

(3)

\+ RFA 78/2014

NEW DELHI MUNICIPAL CORPORATION ..... Appellant
Through Mr. Viraj R. Datar, nominated counsel for Delhi High Court in C.M. 32885/2016

versus

M/S PROMINENT HOTELS LIMITED ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **07.09.2016**

1. The High Court is seeking modification of paras 31.2, 31.3 and 31.4 of the judgment dated 11th September, 2015 whereby certain directions have been given to the Trial Courts. Since the modification sought does not concern either of the parties, notice to the parties is dispensed with and the application is taken up for hearing.

2. Learned counsel for the applicant submits that the directions contained in paras 31.2, 31.3 and 31.4 have a salutary effect on the process of streamlining and purifying the system of administration of justice and aim to achieve speedy and effective disposal of cases pending before the District Courts. It is further submitted that it is necessary to decide the modalities for implementation of the aforesaid directions without disturbing the regular judicial work. It is further submitted that a decision is necessary to be taken by the Hon'ble Chief Justice on the Administrative side about the consequential decisions to be taken by the ACRs Committees/Committees of Inspecting Judges of this Court while recording the ACRs of the Judicial

officers. It is prayed that the matter be placed before the Hon'ble Chief Justice on the Administrative side for taking appropriate decision regarding the modalities to be followed for implementation of the directions contained in paras 31.2, 31.3 and 31.4 of the judgment dated 11th September, 2015.

3. This Court is satisfied that this matter be placed before Hon'ble the Chief Justice on the Administrative Side for working out the modalities for implementation of the directions contained in the judgment dated 11th September, 2015.

4. This Court is further of the view that Section 209 of the Indian Penal Code should be invoked in cases of false claims. In a recent decision of this Court in ***H.S. Bedi v. National Highway Authority of India***, 220 (2015) DLT 179, this Court has examined the scope of Section 209 of the Indian Penal Code.

5. In view of the above, the application is allowed and paras 31.2, 31.3 and 31.4 of the judgment are substituted with the following two paragraphs:

> *"31.2 This Court is of the view that day-to-day trial should be conducted in such frivolous suits. This Court is further of the view that Section 209 of the Indian Penal Code should be invoked in cases of false claims. The first thing required in this regard is to identify the frivolous cases pending before the Trial Courts. This Court is of the view that the Courts below should initially scan the pending cases which are more than five years old and identify cases in which there is prima facie material to show that having secured an ad-interim order, the litigant is deliberately delaying the disposal of the suit. The Trial Courts should also identify the cases in which there is an objection to the jurisdiction of the civil Court to entertain and try the suit. This Court is further of the view that the Trial Courts should complete this exercise within two months and submit their report with respect to the*

(5)

particulars of such cases to the District Judges who shall place the report before the ACR Committee of the respective Trial Court Judges. The hearings of such cases also need to be expedited with a fixed time frame.

31.3 This judgment be placed before the Hon'ble Chief Justice of this Court on the Administrative side for considering the aforesaid suggestions and issuing appropriate directions."

6. Copy of this order be given *dasti* under signature of the Court Master to learned counsel for the applicant.

J.R. MIDHA, J.

SEPTEMBER 07, 2016
dk

(6)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RFA 78/2014 & CM Nos.4137/2014 & 15024/2014

Date of Decision: September 11, 2015

NEW DELHI MUNICIPAL COUNCIL ..... Appellant

Through: Mr. Sanjay Poddar, Senior Advocate with Ms. Rachna Golchha, Mr. Govind Kumar, Ms. Pavni Poddar, Advocates with Mr. Kishore Prashad, Senior Assistant, NDMC.

versus

M/S PROMINENT HOTELS LIMITED ..... Respondent

Through: Mr. Amit S. Chadha, Senior Advocate with Mr. Vishal Singh, Mr. Sahil Mongia and Mr. Abhishek Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant, NDMC, has challenged the impugned judgment and decree dated 22nd November, 2013 whereby the Trial Court has decreed the respondent's suit for declaration, permanent and mandatory injunction.

2. ***Factual matrix***

2.1. NDMC invited tenders for licence of plot No.37, Shaheed Bhagat Singh Marg, New Delhi measuring 0.66 acres for the construction and commissioning of a youth hostel to meet the

requirement of ASIAD games in 1982.

2.2. M/s P.S.J. Housing Enterprises Pvt. Ltd. submitted the highest bid, which was accepted by NDMC and a licence deed dated 4th November, 1981 was executed by NDMC in favour of M/s. P.S.J. Housing Enterprises Pvt. Ltd. In terms of clause 22 of the licence deed dated 4th November, 1981, M/s. PSJ Housing Enterprises Pvt. Ltd. incorporated a public company, M/s.Prominent Hotels Ltd. with the object of taking over the youth hostel.

2.3. On 16th July, 1982, NDMC executed a licence deed dated 16th July, 1982 in favour of M/s Prominent Hotels Ltd. (hereinafter referred to as 'Licensee') for running an international youth hostel for a period of 99 years with effect from 4th November, 1981 subject to increase in licence fee after every 33 years.

2.4. The Licensee constructed a luxurious hotel, instead of a youth hostel, on the licensed plot which was completed in September, 1987.

2.5. In September, 1987, the management of the Licensee changed by the sale of the project by H.R. Sabharwal group to Hari Ram Kakkar, an Afgan national of Indian origin who invested in this project.

2.6. The licence deed provides for a minimum guaranteed licence fee of Rs.21,08,040/- or 23% of the annual gross turnover of the Licensee, whichever is more, from the date of handing over of the possession, i.e. 4th November, 1981.

2.7. Clause 5 of the licence deed dated 16th July, 1982 requires the Licensee to furnish the annual audited reports to NDMC to enable the

NDMC to compute the licence fee. However, the Licensee defaulted in furnishing the annual audited reports for the years 1991-92 to 1993-94 and therefore, NDMC issued a show cause notice dated 15th June, 1994 to the Licensee to show cause why legal action be not initiated for violation/breach of the licence deed in pursuance of which the Licensee furnished the annual reports to NDMC whereupon NDMC computed dues of Rs.3,05,67,355.20 towards the licence fee and interest upto period ending July 1994.

2.8. Vide show cause notice dated 09th September, 1994, NDMC called upon the Licensee to pay Rs.3,05,67,355.20 towards the arrears of licence fee and interest upto July, 1994.

2.9. Vide show cause notice dated 23rd December, 1994, NDMC called upon the Licensee to show cause as to why the licence be not cancelled on account of non-payment of Rs.3,05,67,355.20.

2.10. On 01st February, 1995, NDMC cancelled the licence due to non-payment of Rs.3,05,67,355.20 and vide letter dated 21st February, 1995, NDMC intimated the cancellation of the licence to the Licensee and notified the Licensee that their occupation, after the cancellation of the licence, was unauthorised and therefore the Licensee should stop the use of the premises.

2.11. NDMC initiated proceedings against the Licensee under Sections 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the Licensee and recovery of licence fees and damages before the Estate Officer which are pending.

(9)

2.12. ***Licensee's suit for declaration, permanent and mandatory injunction***

On 28th February, 1995, the Licensee instituted the suit for declaration, permanent and mandatory injunction. The Licensee pleaded *inter alia* that the Licensee completed the construction of a building on the licensed plot in 1987. During the course of construction, the Licensee found that the project was economically unviable as the Licensee was obliged to pay licence fee at the rate of 23% of the gross turnover with a minimum guaranteed amount of Rs.21,08,040/-, which was grossly excessive whereas the NDMC was charging 15% of the gross turnover from the other hotel chains. The project was also unviable as the licence deed provides FAR(Floor Area Ratio) of 100 whereas the other hotels have been granted FAR of 250. The Licensee pleaded having made a representation to the Lt. Governor on 28th August, 1987 for reduction of licence fee. The Licensee further pleaded having made representations to NDMC on 22nd February, 1988; 20th April, 1988; 10th February, 1992; 24th July, 1992 and 29th April, 1994. The Licensee admitted the change of management by sale of project by H.R. Sabharwal Group to Hari Ram Kakkar in September, 1987. The Licensee sought the following prayers in the plaint: -

> *"(i) Pass a decree of declaration declaring that the term and condition in the License Deed dated 16.07.1982 'that the plaintiff company is liable to pay annual license fee for plot numbered as 37-Shaheed Bhagat Singh Marg,*

(10)

New Delhi at the rate of 23% on the annual gross turnover of the business' is unlawful and is null and void abinitio.

(ii) Pass a decree of mandatory injunction directing the NDMC to grant to the plaintiff company for the plot of land referred to in para (I) above, a Floor Area Ratio at the rate of 250.

(iii) Pass a decree of Permanent injunction restraining the defendant NDMC from in any manner interfering, obstructing and otherwise affecting the supply of water, electricity and other amenities provided to the plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi.

(iv) Pass a decree of permanent injunction restraining the defendant NDMC from in any manner re-entering into the plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi or taking any action pursuant to order of cancellation dated 21.2.1995 of License Deed dated 16.07.1982."

2.13. ***Defence of NDMC in the Suit.***

2.13.1. The suit is barred by Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as the Licensee is an unauthorised occupant after the cancellation of the allotment. NDMC has already initiated proceedings for eviction against the Licensee under Sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 before the Estate Officer.

2.13.2. The contractual obligations of the licence deed executed between the parties are binding on both the parties and the Licensee cannot wriggle out of the same.

2.13.3. The Licensee is estopped from challenging the licence deed executed between the parties after understanding and

without any force or coercion.

2.13.4. The Licensee is under contractual obligation to pay the licence fee and use the premises as per the licence deed in accordance with the agreed terms and conditions of the licence deed.

2.13.5. The Licensee never raised any objection to validity of the licence deed till 1994. The Licensee was in use, occupation, possession and enjoyment of licensed premises since 1981. The challenge to the clauses of the licence deed after 13 years of the allotment is misconceived and untenable.

2.13.6. The Licensee has become unauthorised occupant after the cancellation/termination of the licence and cannot be permitted to challenge the terms of the licence deed that too when the Licensee has derived the benefit from the allotment of the licensed premises for such a long time.

2.13.7. The Licensee's grievance of lower FAR is misconceived as the licence deed clearly provides mechanism for increase of FAR upon payment of enhanced licence fee to be decided by NDMC.

2.13.8. No representation or concrete proposal for permission of increase of FAR has been made by the Licensee in terms of the licence deed.

2.13.9. The suit has not been valued properly for the purpose of Court fees and jurisdiction as admittedly a sum of Rs.3,40,97,015/- was due towards the licence fee for the period 1987 to 1995.

2.13.10. The suit has not been signed, instituted and verified by a duly authorised and competent person.

2.13.11. The Licensee's suit in respect of the prayer for declaration is not maintainable as the Licensee has not served a mandatory notice under Section 385 of NDMC Act, 1984.

2.13.12. The use of licensed premises by the Licensee for a hotel is in clear cut violation of the licence deed between the parties. The Licensee was never granted a licence for running a hotel. In fact, the licence was given for running a hostel.

2.13.13. The conversion of youth hostel into a 4/5 star hotel was never approved by NDMC. The approval of Ministry of Tourism does not create any right or interest in favour of the Licensee to convert the youth hostel into a hotel in utter disregard and violation of the terms of the licence deed.

2.13.14. The Licensee has misused the allotted premises for hotel purposes as the plot in question was allotted for a youth hostel.

2.13.15. The Licensee has raised a false plea of keeping minimal tariff. A bare perusal of tariff rates of the Licensee's hotel shows that it is equivalent to that of 4/5 star category hotels.

2.13.16. The Licensee has violated the terms of the licence deed by unauthorisedly selling the licensed property admitted by them in para 13 of the plaint. As per the licence deed, the Licensee cannot part with possession of the licensed premises without the written permission of the NDMC.

2.14. ***Issues***

(13)

The following issues were framed on 2nd November, 1999:-

"(1) Whether the present suit for declaration, permanent and mandatory injunction as claimed is maintainable without serving notice under section 385 of NDMC Act, 1994? OPP

(2) Whether the jurisdiction of this court is barred in view of the provisions of section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 after the termination of the license deed vide letter dated 21st February, 1995? OPP

(3) Whether the suit has been signed, verified and instituted by a duly authorised and competent person.

(4) Whether the suit is correctly valued for the purposes of Court Fee and Jurisdiction? OPP

(5) Whether the terms and conditions of the licence deed dated 16th July, 1982 were wholly unconscionable arbitrary and, therefore, unenforceable? OPP

(6) Whether the impugned action of the defendant in termination/cancellation was illegal, malafide or arbitrary or ultravires? OPP

(7) Whether the plaintiff can continue in possession upon termination of the licence? OPP"

2.15. ***No oral evidence led by the Licensee***

2.15.1. Vide order dated 10th April, 2002, the evidence of the Licensee was closed on the ground that the Licensee failed to produce any evidence despite number of opportunities granted, made all out efforts to postpone the recording of evidence of the witnesses in the trial on one pretext or the other and was bent upon to frustrate the recording of the evidence.

2.16. ***Documentary evidence before the Trial Court at the time of final hearing***

Since both the parties did not lead any oral evidence before the Trial Court, the following documentary evidence was to be considered by the Trial Court at the time of final hearing:-

2.16.1. **Ex.P-1-** Show cause notice dated 15th June, 1994 by the NDMC to the Licensee.

Ex.P-2- Final show cause notice dated 9th September,1994 by NDMC to the Licensee.

Ex.P-3- Show cause notice dated 23rd December, 1994 by NDMC to the Licensee.

Ex.P-4- Cancellation letter dated 21st February, 1995 issued by the NDMC to the Licensee.

2.16.2. **Ex.D-1-** Licence Deed dated 16th July, 1982 between NDMC and M/s Prominent Hotels Limited.

Ex.D-2- Licence Deed dated 22nd April, 1982 between NDMC and M/s Bharat Hotels Limited.

Ex.D-3- Licence Deed dated 2nd March, 1997 between NDMC and Sunair Hotels Limited.

Ex.D-4- Licence Deed dated 14th July, 1982 between NDMC and M/s CJ International Hotels Limited.

Ex.D-5- Collaboration Agreement dated 18th April, 1976 between NDMC and Indian Hotels Company Limited.

Ex.D-6- Licence Deed dated 16th April, 1981 between NDMC and M/s Pure Drinks.

Ex.D-7- Supplemental Agreement dated 1st February, 1998 between NDMC and Sunair Hotels Company Limited.

Ex.D-8- Supplementary Agreement dated 28th September, 1999 between NDMC and

(15)

Sunair Hotel Limited.

Ex. D-9- Perpetual lease deed between Secretary of State for India in Council and New Delhi Municipal Committee dated 26th January 1935.

Ex. D-10- Letter of allotment of land to NDMC for child welfare centre dated 8th March 2004.

3. ***Subsequent developments during the pendency of this appeal***

3.1. Vide order dated 02nd February, 2015, this Court stayed the impugned judgment and decree of the Trial Court.

3.2. NDMC sealed the subject premises on 16th February, 2015.

3.3. The Licensee challenged the sealing of the premises by writ petition bearing W.P.(C) No.1629/2015, which is pending.

3.4. The balance sheets of the Licensee for the year ending 31st March, 2014 filed in the Writ Petition reflects the outstanding licence fee of Rs.35,31,52,823/- payable by the Licensee. The balance sheets further reveal that the Licensee has shown the licence fee as expenses, deducted from gross income and has thereby derived the tax benefits from the Income Tax authorities.

3.5. The initial 33 years' period of the licence deed dated 16th July, 1982 expired on 3rd November, 2014. NDMC has not renewed the licence thereafter.

4. ***Relevant clauses of the Licence Deed***

"1. The license shall be for a period of 99 (Ninety Nine) years w.e.f. 4.11.1981 subject to increase in license fee after every 33 years as may be mutually agreed upon between the Licensees and the licensor.

(16)

3. *In consideration of the licensor granting to the Licensees, the licence in respect of the said plot of land for constructing of Youth Hostel building, vesting in the licensor (New Delhi Municipal Committee), the Licensees save as provided in Clause II shall pay to the licensor as and by way of license fee an amount of Rs.21,08,040/- (Rupees Twenty One Lakh Eight Thousand and Forty Only) worked out at 22% (twenty-two) per annum of the land value assessed at Rs.3000/- per sq. yd. as minimum guaranteed amount or 23% of the Gross turnover of the Licensees from the said Youth Hostel for every financial year of the Licensees, as certified by the statutory auditors of the Licensees, whichever is higher. The liability for payment of licence fee has commenced w.e.f. 4.11.1981. The license fee in respect of the period which is less than the financial year shall be paid by the Licensees to the licensor on a pro-rata basis of the statement certified by the statutory auditors of the Licensees.*

4. *Before a financial year comes to an end, the licencees shall estimate the gross turnover from the said hostel for the ensuing financial year and accordingly estimate the amount of licence fee payable by the Licensees to the licensor as aforesaid. The licence fee so estimated or the minimum annual guaranteed amount, whichever is higher, shall be payable annually in advance latest on the anniversary of handing over of the possession of the said plot of land on which the annual advance licence fee falls due in each year.*

5. *The Licensees shall furnish to the licensor every year, within a period of thirty days of the date on which audited accounts of the Licensees are approved and adopted by the Annual General Meeting of the shareholders of the licencees, a statement duly certified by the statutory auditors of the licencees appointed in pursuance of the relevant provisions of the Companies Act, 1956 giving break-up of the various items comprising the total gross turn over in relation to the business of the licencees in the said Hostel during the preceding financial year.*

(17)

7. *In the event of the Licensees committing a default in the payment of licence fee as mentioned hereinabove for any reason whatsoever, the licencees shall be liable to pay to the licensor, licence fee along with interest for the period of default at 20% per annum on the amount of licence fee, remaining outstanding beyond the due date and falling in arrears. Such interest shall be charged for full month if the payment of licence fee is not made by the due date with arrears if any and such interest shall continue to accrue to the licensor month by month till the account is finally squared up.*

8. *The licensor shall have at all times discretion to inspect the books of accounts and other relevant records of the licencees in respect of the said hostel with a view to satisfying itself that total amount of the gross turnover as certified by the statutory auditors of the licencees represents a true and honest computation of the business actually handled by the licencees in relation to the said hostel. The licensor shall for this purpose, have inspection done at the cost either by a person or persons in the employment of the licensor or by such other persons or agents as the licensor may nominate for the purpose. The licensor shall, however, give to the Licensees, a prior written notice for period not less than (14) fourteen days before the date of commencement of such inspection.*

9. *In the event of the licencees failing to make the payment of licence fee, interest due thereupon or any other payment due against the licencees for any reasons whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further reference to the licencees to revoke/cancel the licence with immediate effect for running the said hostel in terms of this licence, to take possession of the licensed premises by recourse to law as provided in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or any other such law in force, at that time, after revocation of the licence and the licencees shall have no claim on the premises but only seek arbitration under clause 54 of this agreement.*

10. The land for the construction and commission of youth Hostel would continue to vest with the licensor in whom the building so constructed will also vest and the period of licence would be for 99 years but the licencees, M/s. Prominent Hotels Ltd. shall have the right to raise loans on the security of the structures/buildings/fixtures and fittings etc. which shall be put up by the licencees aforesaid on the said licensed plot from any Indian or Foreign licensed Bank or from any Financial Corporation including the I.C.I.C.I and I.D.B.I and the Licensor, New Delhi Municipal Committee will have no objection to the licencees M/s. Prominent Hotels Ltd. adopting such a course facilitating for the completion of the project.

11. The Licence will be liable for termination if at any time the licencees commits any breach of the terms, conditions and covenants on their part to be observed and performed under this licence deed. But before any action is taken in this behalf, the licensor shall communicate in writing to the licencees, M/s. Prominent Hotels Ltd. the breach, if any, of the terms and conditions on their part to be observed and performed under this licence deed and it will be open to the licencees to satisfy the licensor that there had in fact been no such alleged breach to the satisfaction to the licensor.,

12. The F.A.R. of the land shall not be more than one if the said F.A.R. of one is allowed to be increased at any time the Licensees shall be liable to pay such increased license fee as may be decided by the licensor after giving reasonable opportunity to the Licensees in this behalf.

16. The licencee shall not be at liberty in any way to underlet, sublet, encumber, assign, or transfer their rights and interest or part with possession of the land and the building thereon or any pert thereof for share therein to any person, directly or indirectly without the previous written consent of the licensor. But the Licensee shall have the right to sub-license the licensed property as stipulated in clause 34 of this licence agreement.

18. The Licensees shall have a bare license only to enter upon the piece of land to be allotted by the New Delhi

19

Municipal Committee for the purpose of building and executing works thereon as hereinafter provided in the license Agreement and for commissioning a Youth Hostel to the satisfaction of the Licensor. The Licensees shall be deemed to be bare Licensees only of the land subject to payment of license fee as has been agreed to between the Licensees M/s Prominent Hotels Ltd. and licensor, New Delhi Municipal Committee.

19. Nothing contained in these documents shall be construed as a demise in the law of the said land hereby agreed to be demised or any part thereof so as to give to the Licensees M/s Prominent Hotels Ltd. any legal title, right or interest therein. The Licensees shall only have a license to enter upon the said land for the purpose of building and executing works thereon as hereinafter provided and for running a Youth Hostel to the satisfaction of the licensor.

20. (vi) The licencees shall fix and keep the tariff as low as possible, subject of course, to the economic viability of the Youth Hostel as the project of Youth Hostel is meant for economically weaker sections and persons belonging to low income groups. However, the tariff to be charged at the said Youth Hostel during Asiad-1982 shall be subject to prior approval of the licensor in writing and the decision of the licensor in this regard shall be final and binding on the licencees.

(vii) That the licencees shall do all such other acts, deeds, and things as may be required by the licensor, New Delhi Municipal Committee to the running of Youth Hostel in the building to be constructed on the said plot of land for continuing the same throughout the terms of the licence.

(xii) The licencees M/s Prominent Hotels Ltd. will pay all rates, taxes, charges, claims and outgoings chargeable against an owner of occupier in respect of the said land and any building or erection to be built thereon and in respect of the businesses to be carried thereon during entire period of licencee except the House Tax as building will vest in the licensor, New Delhi Municipal Committee for all intents and

(20)

purposes. The exemption of house tax in respect of the building will be subject to the prior approval of the Delhi Administration.

21(b) In case the Licensees shall commit any breach or make default in the performance of all or any one or more of the covenants on their part hereinbefore and hereinafter contained in this licence agreement it shall be lawful for the licensor or for officers in his behalf to re-enter into and upon the said land and building and take and retain possession of the said land and of all such buildings, erections, super structure and material as may then be found upon the said land for the absolute use of the licensor without any compensation and without prejudice to all other legal rights and remedies of the licensor against the said licencees.

22. That the licencees shall ensure that the Youth Hostel primarily cater to low income group, student community, Youth both from within and outside India.

29. That the accommodation/Buildings to be constructed on the licensed space shall at all times vest in the licensor together with all fittings, fixtures and other installations of the immovable types of the types removal of which is likely to cause damage to the accommodation/building. A list of such fittings, fixtures and installations shall be drawn up jointly, by the representatives of the licensor and the licencees on completion of the said accommodation/building and the same shall form part of the licence deed.

31. The allotment will be made on licence basis and the licensed premises including building to be constructed will be a public premises within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or such Act, as may be enforced from time to time in this behalf.

32. On revocation of the licence and/or vacation of the premises for any reasons whatsoever, the licencees shall not remove from the premises furnishings, fittings and fixtures of the movable types belongings, to the licencees without prior permission of the licensors and, if required, the licensor shall

have the option to retain the same with payment of compensation as may be mutually agreed upon. IN case of the licensor deciding not to retain the same, the licencees shall remove the same peacefully and restore the space to condition as existing at the time of completion of the building, at their own cost.

45. In any case, if any of the powers to revoke the licence shall have become exercisable but the same if for any reason not exercised, non exercise thereof shall not constitute a waiver of any of the conditions and the powers hereof and such powers shall be exercisable in the event of any violation/conditions and the powers hereof shall be exercisable in the event of any future case of default and the liability of the licencees for past and future defaults shall remain unaffected besides other rights and remedies of the licensor.

46. In the event of licence having been terminated earlier in the terms of the relevant clauses, the Licensees shall vacate the premises in a peaceful manner and clear all the dues of the licensor forthwith.

47. In the event of breach of any of the terms and conditions of the licence, the licensor shall terminate and revoke the licence. On the revocation being made, it shall be the duty of the Licensees to quit and vacate the premises without any resistance and obstruction and give the complete control of the premises to the licensor.

48. If the Licensees default in terms of the license fee or cease to do business in the said Youth Hostel Building commit breach of any of the terms of the licence fully or otherwise, the licensor may give a notice in writing to the Licensees for remedying the breach and if the Licensees fail to do so within a reasonable period as may be determined by the licensor, the licensor may terminate license forthwith.

54. In the event of any question, disputes or differences or differences arising in regard to these terms and conditions and their interpretation, the same shall be referred to the sole

(22)

arbitration of the Lt. Governor of Delhi and the award of the said Arbitrator shall be binding on the licencees and licensor.

(Emphasis supplied)

5. ***Findings of the Trial Court***

5.1. With respect to Issue No. 1, the Trial Court held that the representations made by the Licensee are sufficient notice under Section 385 of the NDMC Act and therefore, the suit was not barred by Section 385 of the NDMC Act

5.2. With respect to Issue No. 2, the Trial Court held that the suit was not barred by Section 15 of the Public Premises (Eviction and Unauthorized Occupants) Act, 1971 because the challenge to the terms of the licence deed and Section 60(b) of the Easements Act cannot be considered by the Estate Officer.

5.3. With respect to issue No.3, the Trial Court held that the suit has been signed, verified and instituted by a duly authorized person vide resolution dated 28th February, 1985.

5.4. With respect to issue No.4, the Trial Court held that the suit to be correctly valued. The Trial Court held that the Licensee cannot be asked to pay *ad valorem* Court fees on the demand raised by NDMC.

5.5. With respect to Issues No.5, 6 & 7, the Trial court held the licence to be irrevocable under section 60(b) of Indian Easement Act 1882 because the Licensee had raised permanent construction. The Trial Court held that the licence deed dated 16th July, 1982 cannot be revoked and is not terminable.

5.6. The Trial Court interpreted "Gross turnover" by observing that

there was no justification for adding the turnover of food, beverages and catering in the gross turnover. The Trial Court further held that the Licensee is entitled to deduct the incentives given to the agents, receipts from various outlets including room revenue from the gross turnover. The Trial Court further observed that these are not earnings at all. The licence fees paid for beverage licence and luxury tax is also not to be included in the gross turnover. The Licensee is entitled to deduct some percentage of gross revenue like incentives given to the agents, receipts from various outlets including room revenue and telephone, telex, fax etc. to its customers and amounts paid to external government agencies, as these are not earnings at all and if amount is calculated on such incidental expenses then it will be totally unreasonable. The Trial Court further held that the income generated attributable directly to the building only remains included in the gross turnover and other income included without cost of direct consumables/commission and the amount spent on the repairs and maintenance and on insurance and repairs and renewals are also deductible from gross turnover. The licence deed is silent with regard to the definition of gross turnover and unless the same is specified or interpreted as per law, the calculation cannot be made.

5.7. The Trial Court declared Clause 3 of the licence deed dated 16th July, 1982, requiring the Licensee to pay annual fee of 23% on the annual gross turnover of the business as arbitrary, unreasonable, unjust, unconscionable, unlawful and, therefore, null and void *ab initio* and available gross turnover is to be defined first. The Trail Court directed NDMC to re-negotiate the terms particularly the clause

3 of the licence deed with the Licensee and pending the negotiation, the Licensee shall continue to pay fixed licence fees of Rs.21,08,040/.

5.8. The Trial Court compared the FAR and licence fee of Licensee with that of Bharat Hotels Limited, Sunair Hotel, C.J. International and Taj Mahal Hotel and held that there is fixed amount of licence fee for two hotels and FAR is also not in consonance with each other. The Trial Court further held that the licence fee should be at a lower side as the Licensee was required to construct a youth hostel. The Trial Court further held that NDMC cannot make unjust enrichment for themselves. The Trial Court further held that though the initial allotment was for youth hostel, the NDMC has ratified the use of the property as a hotel.

5.9. The Trial Court has granted the following reliefs to the Licensee:-

5.9.1. *Decree of declaration declaring the terms and conditions of the license deed dated 16th July, 1982 requiring the Licensee to pay annual fee @ 23% of the gross turnover as arbitrary, discriminatory, unreasonable, unjust, unconscionable, unlawful, null and void.*

5.9.2. *Decree of mandatory injunction directing NDMC to grant FAR(Floor Area Ratio) to the Licensee as permissible in the Zonal Plan.*

5.9.3. *Decree of permanent injunction restraining NDMC from interfering, obstructing and otherwise affecting the supply of water, electricity and other amenities to the Licensee.*

5.9.4. *Decree of permanent injunction restraining NDMC from re-entering the Licensed premises or taking any action pursuant to order of cancellation*

dated 21st February, 1995.

5.9.5. *Order of cancellation dated 21st February, 1995 was set aside.*

5.9.6. *Direction to NDMC to re-negotiate the terms particularly the clause -3 of the license deed with the Licensee and pending the negotiation, the Licensee shall continue to pay fixed license fees of Rs.21,08,040/-.*

6. ***Submissions of NDMC***

6.1. Prayer (i) of the suit for declaring Clause 3 of the licence deed dated 16th July, 1982 as void, is barred by well settled law that the Licensee cannot wriggle out of the commercial contract on the ground that the terms of the contract are onerous. The doctrine of unjust enrichment applied by the Trial Court is not applicable to the commercial transactions. The Licensee submitted the highest bid which was accepted. The Licensee entered into a contract with open eyes and having acted on the same, the Licensee is estopped from challenging the terms of the licence deed dated 16th July, 1982. The Licensee cannot approbate and reprobate. Reliance is placed on ***Alopi Parshad v. Union of India***, (1960) 2 SCR 793, ***Panna Lal v. State of Rajasthan***, (1975) 2 SCC 633, ***State Bank of Haryana v. Jage Ram*** (1980) 3 SCC 599, ***Har Shankar v. Deputy Excise and Taxation Commissioner*** (1975) 1 SCC 737, ***New Bihar Biri Leaves Co. v. State of Bihar*** *(1981) 1 SCC 537,* ***C. Bepathumma v. V.S. Kadambolithaya,*** *1964 (5) SCR 836,* ***Assistant Excise Commissioner v. Issac Peter*** (1994) 4 SCC 104, ***Puravankara Projects Ltd. v. Hotel Venus International,*** (2007) 10 SCC 33, ***Bharti Cellular Limited v.***

Union of India (2010) 10 SCC 174, ***Mumbai International Airport Pvt. Ltd. v. Golden Chariot Airport*** *JT2010 (10) SC 381,* ***Track Innovations India Pvt. Ltd. v. Union Of India*** 2010 (170) DLT 424 and ***C.J. International Hotels Ltd. v. N.D.M.C.*** AIR 2001 Del 435.

6.2. With respect to prayer (ii) of the suit, there was no cause of action in favour of the Licensee as the Licensee had not applied for and was never ready for increase of licence fees under clause 12 of licence deed which provides for increase of FAR upon increase of licence fee.

6.3. Prayers (iii) and (iv) of the Licensee's suit are barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Trial Court had no jurisdiction whatsoever to deal with the cancellation order which fell within the exclusive jurisdiction of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Reliance is placed on ***B. Sharma Rao H. Ganeshmal v. Head Quarters Asstt.*** (1998) 9 SCC 577 and ***State of Haryana V. Khalsa Motors Ltd.*** (1990) 4 SCC 659.

6.4. The Trial Court has quashed the order dated 21st February, 1995 cancelling the allotment of the respondent, which relief was not even claimed by the respondent. Reliance is placed on ***Union of India v. Ibrahim Uddin*** (2012) 8 SCC 148, The Court held that the Court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored.

6.5. The plea of Section 60(b) raised by the Licensee is misconceived as the licence deed dated 16th July, 1982 is revocable. Reference is made to Clauses 1, 9, 10, 11, 18, 19, 20(xii), 21(b), 31, 47, 48 of the licence deed. Clause 9 of the agreement authorizes and empowers the licensor to revoke the licence in the event of the Licensee failing to make the payment of licence fee and the interest due thereupon or any other payment due against the Licensee for any reason whatsoever and to take the possession of the licence premises by recourse to the law as provided in the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Clause 10 of the licence deed stipulates that the land for construction of youth hostel would continue to vest in the licensor in whom the building so constructed shall also vest. Clause 11 provides for termination for breach of any terms and conditions of the licence deed. Clause 20(xii) of the licence deed stipulates that the Licensee is not liable to pay house tax on the land and building as the same vest in the licensor for all intents and purposes. Clause 21(b) of the licence deed also empowers the NDMC to re-enter upon the land and building in the event of any breach or default of the performance of the licence deed. Clause 29 provides that the building to be constructed by the Licensee shall at all times vest in the Licensor together with all fittings, fixtures and installations. Clause 31 of the agreement further makes it clear that the allotment is made on licence basis and the licenced premises including building to be constructed will be a public premises within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Clauses 47 and 48 of the agreement specifically empower

the licensor to revoke and terminate the licence in the event of Licensee committing any breach thereof and to recover possession and to take complete control of the premises without any obstruction and resistance from the Licensee. The licence granted to the Licensee was agreed to be terminable by the licensor in the event of non-payment of licence fee and other dues by the Licensee. The licensor is empowered and entitled to recover the possession of the premises by a summary proceeding initiated under the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Reliance is placed on ***Ram Sarup Gupta v. Bishun Narain Inter College*** *(1987) 2 SCC 555;* ***Corporation of Calicut v. K Sreenivasan,*** AIR 2002 SC 2051; ***Mumbai International Airport Private Limited v. Golden Chariot Airport,*** (2010) 10 SCC 422; ***B.K. Bhagat v. New Delhi Municipal Corporation,*** 2015 SCC online Del 9629*;* ***State of Madhya Pradesh v. Abdul Rahim Khan,*** 1974 MPLJ 7767*;* ***Bhagwauna v. Sheikh Anwaruzzaman,*** *1980 ALL LJ 368*;

6.6. The Licensee has not valued the suit properly for the purpose of Court fees and jurisdiction. The Licensee was seeking to avoid the payment of Rs. 3,40,97,015/- demanded by NDMC and therefore, the suit was required to be valued on that basis. The Trial Court had no pecuniary jurisdiction to entertain and try the suit on the basis of above valuation. Reliance is placed on ***Rampur Distillery and Chemicals Co. Ltd. v. Union of India*** 1995 (57) DLT 642, ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India*** AIR 1975 Delhi 270 and ***M/s Maharaji Education Trust v. Punjab and Sind Bank*** 2006 (127) DLT 161.

6.7. The Licensee has not proved that the suit has been signed, verified and instituted by a competent person. The Licensee has neither led any oral evidence nor proved the board resolution or articles of the Licensee company and therefore, the findings of the Trial Court are clearly perverse as they are not based on any admissible evidence. Reliance is placed on ***Nibro Limited v. National Insurance Co. Ltd.*** 1990 (41) DLT 633.

6.8. The findings of the Trial Court with respect to "Gross turnover" are beyond pleadings and evidence. There is no prayer with respect to the interpretation of term of "Gross turnover" and no issue was even framed by the Trial Court. That apart, there is no merit in the contention of the Licensee as NDMC has just adopted the gross turnover computed by the Licensee in their audited accounts in terms of Clause 5 of the licence deed.

6.9. NDMC is entitled to adopt a procedure by which it can get maximum possible return of the immovable properties in terms of Section 141(2) of the NDMC Act. Reliance is placed on ***Aggarwal and Modi Enterprises Pvt. Ltd. v. NDMC*** (2007) VIII SCC 75.

6.10. The Trial Court merely noticed the area, rate of licence fee and the FAR given to the respective Licensees of the hotels, without considering the location, the purpose of licence, the area covered in the licence, the advantages and disadvantages attached to each of the properties. The Trial Court even failed to appreciate that terms and conditions of the licence deed in respect of hotels are different than the terms and conditions of the licence given for a youth hostel. In the

present case, admittedly the licence was granted for construction and running of youth hostel and not for a commercial hotel. Transactions involved in the cases are not on equal footing and thus were unequals. It is well settled law that unequals cannot be treated equally.

6.11. The first instance relied upon by the Trial Court relates to Bharat Hotels Ltd covered by Ex.D-2 i.e. licence deed dated 22nd April, 1982. By this licence deed, land measuring 6.0485 acres was given on licence for five star hotel of 500 rooms capacity, at a licence fee of 1.5 crore per month without any linkage with the percentage on turnover.

6.12. The second instance relied upon by the Trial Court relates to Sunair Hotel covered by Ex.D-3 i.e. licence deed dated 22nd March, 1977 followed by two supplementary agreements Ex.D-7 dated 01st February, 1998 and Ex.D-8 dated 28th September, 2009.

6.13. The third instance relied upon by the Trial Court relates to C.J. International covered by Ex.D-4 and D-6, namely, the licence deed dated 16th April, 1981 between NDMC and M/s Pure Drinks and licence deed dated 14th July,1982 between NDMC and M/s C.J. International Hotels Ltd. (Ex.D-4) whereby a plot measuring 4.3 acres of land was given on licence for construction of 358 rooms of Five Star Hotel at the minimum licence fee of Rs.2.668 Crores or 21% of the gross turnover, whichever is higher.

6.14. The fourth instance was of Hotel Taj Mahal at Man Singh Road which was on licence vide licence deed dated 18th April, 1976 but only collaboration agreement dated 18th April, 1976 was exhibited as

Ex.D-5. Vide Collaboration Agreement, land measuring 3.27 acres was given to Indian Hotels Company Ltd. for construction of a Five Star Hotel from the funds made available by the NDMC and after construction the same was given on licence fee basis @ 15% of the licensor's instrument as the minimum guaranteed amount or 10.5% of the gross receipt, whichever is higher.

6.15. None of these instances can be taken into consideration while examining the plea of discrimination in view of the law laid down by the Supreme Court in the case of ***Radhakrishna Agarwal v. State of Bihar***, AIR 1977 SC 1496 inasmuch as the Licensee has failed to establish how is it similarly placed with other instances. The size of the plot, the purpose of the licence and the nature of construction in all the cases are different and are not identical. Admittedly, the Licensee was not discriminated in the bidding process. The Licensee has admittedly not led any evidence to bring out the comparison between the two. No evidence has been led to establish the discrimination between the parties identically situated. Besides this, as held by the Supreme Court in para 10 of the said judgment, the discrimination and violation of Article 14 of the Constitution does not arise once the agreement is executed between the parties and they are bound by the terms and conditions of the agreement. Thus, the plea of discrimination in this behalf is liable to be rejected.

6.16. The Licensee has sought parity with these Hotels on the ground that though the licence was for construction and running of a youth hostel but the licensor had allowed and ratified the construction and

running of a four star hotel. As submitted above, no oral evidence in this behalf has been led by the Licensee and the documentary evidence placed by it also do not support such a claim. On the contrary, during the pendency of the suit, this Court vide order dated 10th September, 2002 permitted that Licensee to file a detailed representation to the licensor. Pursuant to this order, the Licensee made a detailed representation on 20th September, 2002 and in this representation sought regularisation of the conversion of hotel from hostel. This assertion of the Licensee clearly belies its claim.

6.17. Before the Trial Court, NDMC relied upon ***Assistant Excise Commissioner v. Issac Peter*** (1994) 4 SCC 104, ***Puravankara Projects Ltd. v. Hotel Venus International*** (2007) 10 SCC 33, ***Bharti Cellular Limited v. Union of India*** (2010) 10 SCC 174, ***Mumbai International Airport Private Limited v. Golden Chariot Airport,*** (2010) 10 SCC 422, ***Track Innovations India Pvt. Ltd. v. Union Of India,*** 2010 (170) DLT 424, ***C.J. International Hotels Ltd. v. N.D.M.C.,*** AIR 2001 Del 435, ***C. Beepathumma v. V.S. Kadambolithaya.*** 1964 (5) SCR 836, ***State of Haryana v. Khalsa Motors Ltd.*** (1990) 4 SCC 659, ***B. Sharma Rao H. Ganeshmal v. Head Quarters Asstt.*** (1998) 9 SCC 577 and ***Aggarwal and Modi Enterprises Pvt. Ltd. v. New Delhi Municipal Committee*** 63(1996) DLT 676, which are binding precedents for the Trial Court. These judgments were submitted and relied upon at the time of final hearing by NDMC in the written submissions filed and on record of Trial Court at page 3607 in Vol. 4. However, the Trial Court did not even consider and discuss the aforesaid judgments in the impugned

judgment. The impugned judgment rendered by the leaned Trial Court in violation of the binding precedents of the higher Courts and in particular the Apex Court is a nullity. Reliance is placed on ***Dwarikesh Sugar Industries ltd. Vrs. Prem Heavy Engineering Works (P) Ltd. & Ors.*** 1997 (6) SCC 450.

6.18. The Licensee failed to establish that the licensor ratified the change of user as claimed by it. However, in the relief clause the Trial Court recorded that "....concept of Hotel or youth hostel as the case may be (though now the youth hostel has been ratified as Hotel by NDMC itself)." This conclusion of the Trial Court is contrary to the observation/ finding recorded in para 21 of the impugned judgment. The Trial Court under this wrong premise made the comparison of the licence in question treating the same as licence for hotel with other licences of hotel buildings. This is the basic and fundamental error committed by the Trial Court and the finding so recorded is unsustainable in law.

6.19. That as per the own showing of the Licensee, the licence was obtained by it when the management of the Licensee company was with H.R. Sabharwal Group. As per the averments made in para 12 of the plaint, the Licensee company vide its representation dated 28th August, 1987 sought reduction in licence fee pleading economic unviability of the project. However, in para 13, the Licensee admitted that in September, 1987, there was a change in the management of the Licensee company. The said H.R.Sabharwal group sold out the Licensee company and Hari Ram Kakkar Group, the present management, took over the reins of the company. As the Sabharwal

group had already sought reduction in the licence fee on the ground of economical unviability of the project, then in such situation, it is not understandable as to why Kakkar group purchased the management and took over the same from Sabharwal group and that too at what consideration. In any case, this admission established beyond any doubt that the Kakkar group took a calculated risk with full knowledge of all economic conditions and the reduction of licence fee was claimed for some extraneous considerations. Therefore, the Licensee is precluded from raising any objections and to seek modification of the payment clause in the agreement at this belated stage.

6.20. The reliance of the Trial Court on intra-departmental noting dated 03rd December, 1992 of the Administrator of NDMC and reference to the same as order of Administrator is misplaced and against the settled principles of law reiterated by the Supreme Court in a catena of judgments. In ***Sethi Auto Service Station v. DDA***, (2009) 1 SCC 180, the Supreme Court has held that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. Reliance is also placed on ***Union of India v. Vartak Labour Union (2)***, (2011) 4 SCC 200, ***State of Bihar v. Kripalushanker*** (1987) 3 SCC 34 and ***Jasbir Singh Chhabra*** **v.** ***State of Punjab*** [(2010) 4 SCC 192] and ***Union of India v. Vartak Labour***

Union (2) (2011) 4 SCC 200 in this regard.

6.21. The Trial Court has completely ignored the loss to public exchequer caused by the Licensee. As of today, the Licensee is liable to pay outstanding dues of Rs.122 crores and NDMC is not able to recover the said amount because of impugned judgment and decree. After cancellation of its allotment, the Licensee became unauthorised occupant of the property and liable to pay damages @ 30% above the licence fee.

6.22. As per Clause 1 of licence deed dated 16th July, 1982, the Licensee was initially granted a licence for a period of 33 years and the same could be extended up to 99 years. However, the extension of licence beyond the initial period of 33 years was subject to increase in licence fee "as may be mutually agreed between the Licensee and licensor." Admittedly, no increased licence fee has been mutually agreed between NDMC and the Licensee. The Licensee has not even approached the NDMC for seeking renewal of the licence beyond 33 years after the expiry of 33 years and in the absence of any mutually agreed licence fee after 33 years, it gives an additional cause of action to NDMC to seek the eviction of the Licensee.

6.23. The Trial Court committed grave error by relying on ***Bai Hanifa Jusab v. Memon Das A Gani Sardharia*** AIR 1964 Gujarat 44. It is submitted that the proposition of law laid in that case was in facts and circumstances of that case and is not applicable in the present case. Similarly the decision of this Court in ***Malarvizhi Elangovan v. Director of Estates*** (2009) 156 DLT 394 is

distinguishable on facts. In this case, the Court was called upon to examine the denial of benefit to the Petitioner of the policy and notification issued by the NDMC. This Court held the Petitioner's case to be covered by the said policy and allowed substitution/mutation of the name of the Petitioner as Licensee in terms of the policy and notification issued by the NDMC.

6.24. The Trial Court relied upon ***A.H. Forbes v. L.E. Ralli*** AIR 1925 PC 146, ***Ramsen v. Dyson, Bavasahed Walad v. West Patent Press Co. Ltd*** AIR 1954 BOM 257, ***Swami Jain Ram Chela Sarju Das v. Hari Singh*** AIR 1967 Punjab 159 at Delhi, ***Sivayogeswara Cotton Press v. M. Panchaksharappa*** AIR 1962 SC 413, ***MCD v. Shashank Steel Industries (P) Ltd***, AIR 2009 SC 967 to hold that once the lease is granted and the tenant/lessee raises construction of a superstructure on the said land, the tenant gets an interest in the leased property and the lease becomes irrevocable. The Trial Court erred in relying upon the decisions relating to leasehold rights with the case relating to licence. It is well settled law that both the terms are different and create different rights and obligations. Leasehold rights cannot be equated with licence. Lease is created under Section 105 of the Transfer of Property Act, 1882 and the rights and obligations of lessor and lessee are governed thereunder whereas the licence is created under Section 52 of the Indian Easement Act. As submitted above, the Licensee does not get any interest in the licensed property but only gets a permission to use the licensed property in a particular manner. The licence so granted by its nature is revocable. The Trial Court wrongly mixed up both the issues and arrived at a wrong

conclusion.

37

7. ***Submissions of Licensee***

7.1. With respect to prayer (i) of the plaint for declaring Clause 3 of the licence deed dated 16th July, 1982 as null and void and the decree of declaration granted by the Trial Court, counsel for the Licensee made a statement on instructions from the Managing Director of the Licensee present in Court on 3rd August, 2015 that he does not press prayer (i) of the plaint and therefore, has no objection to the decree of declaration being set aside by this Court.

7.2. The Licensee's suit is not barred by Section 15 of Public premises (Eviction of Unauthorized Occupants) Act, 1971Act, as the Licensee has challenged the terms of the licence deed with respect to licence fee and FAR, and has sought injunction against the arbitrary action on re-entry and disconnection of essential services. The said reliefs are not covered under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and therefore, the suit was not barred by Section 15 of Public premises (Eviction of Unauthorized Occupants) Act, 1971. It is further submitted that the Licensee cannot initiate proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Licensee cannot appoint the Estate Officer; and the Estate Officer has no jurisdiction to decide the validity of the terms of the Licence deed. Reliance is placed on ***Dhula Bhai v. State of M.P.*** AIR 1969 SC 78, ***Premier Automobile Ltd. v. Kamlekar Santa Ram Wadke*** (1971) 1 SCC 496, ***Raja Ram Bhargva v. Union of Inida*** 1988 (1) SCC 681, ***DDA v. Darshan Lal*** 2002 (97) DLT 573,

Shiv Kumar Chaddha v. MCD 1993 (3) SCC 161, ***Abdul Gafur v. State of Uttarakhand, (2008) 10 SCC 97*** and ***Express Newspaper Pvt. Ltd. v. UOI & Anr.*** AIR 1986 SC 873.

7.3. With respect to objection of defect in valuation of the suit for the purpose of Court fees and jurisdiction, it was submitted that the defect can be rectified and the Licensee is ready to pay the deficient Court fees.

7.4. The licence of the Licensee is irrevocable in view of the construction of structure of permanent nature constructed by the Licensee and the terms of the licence deed dated 22nd July, 1982. Reliance is placed on ***Bai Hanifa Jusab v. Memon Das A Gani Sardharia*** AIR 1964 (GUJ.) 44, ***Malarvizhi Elangovan v. Director of Estates*** (2009) 156 DLT, ***Thomas Cook (India) v. Hotel Imperial & Ors.*** 2006 (217) DLT 431 and ***Bishan Das v. State of Punjab*** (1962) 2 SCR 69, ***Associated Hotels of India Ltd v. R.N. Kapoor***, AIR 1959 SC 1262, ***Bharat Petroleum Corporation Ltd. v. Municipal Corporation of Delhi***, 64 (1996) DLT 237, ***Sharda Nath v. Delhi Administration***, 149 (2008) DLT 1(DB), ***United India Insurance Co. Ltd. v. Pushpalaya Printers***, (2004)3 SC 694.

7.5. The suit has been signed, verified and instituted by Ramesh Kakkar, Managing Director of the Licensee. The procedural defect of not proving the Board Resolution of the Licensee can be cured by invoking Order XVI Rule 27(i)(b) of the Code of Civil Procedure. Reliance is placed on ***United Bank of India v. Naresh Kumar*** (1996) 6 SCC 660 and ***Amco Vinyl Ltd. v. Classic Industries*** (2012) DLT

7.6. With respect to the meaning of term 'Gross Turnover', the Licensee has made many representations to NDMC. However, it was not disputed that there are no pleadings in the plaint, no prayer has been made in the plaint and no issue was framed. It is also not disputed that the representations of the Licensee are not exhibited. It is however submitted that the representations can still be looked into as they are admitted by NDMC in the pleadings.

7.7. The Licensee has been running a hotel with the implied consent of NDMC. NDMC has granted trade licences for the user to the Licensee. NDMC has cancelled the licence for non-payment of licence fee and not for use of the premises as a hotel. No plea of misuse has been taken by NDMC in the written statement. NDMC is estopped from raising the issue of alleged misuse at this stage. Reliance is placed on ***Coffee Board, Karnataka v. Commissioner of Commercial Taxes*** (1988) 3 SCC 263, ***Chairman & MD, NTPC Ltd. v. Reshmi Construction, Builders & Contractors*** (2004) 2 SCC 663 and ***Bharat Petroleum Corpn. V. Great Eastern Shipping Co. Ltd.*** AIR 2008 SC 357.

7.8. The reply of the Licensee to the show cause on the issue of running of the hotel was accepted by NDMC and NDMC cannot rake up the issue of running of the hotel at the appellate stage. Reliance is placed on ***Abdullah Ahmed v. Animendra Kissen Mitter*** AIR 1950 SC 15, ***Godhra Electricity Co. v. State of Gujarat*** AIR 1975 SC 32, ***Rati Ram v. M/s DCM Shriram Consolidated Ltd.*** 187 (2012) DLT 5

and ***Keshav Kumar Swarup v. Flowmore Private Ltd.*** (1994) 2 SCC 10.

7.9. NDMC is estopped from raising any other ground for termination which is not in existence in impugned termination order. Reliance is placed on ***Commissioner of Police, Bombay v. Gordhandas Bhanji*** AIR 1952 SC 16, ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*** (1978) 1 SCC 405, ***Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority*** (2013) 10 SCC 95 and ***Dipak Babaria v. State of Gujarat*** (2014) 3 SCC 502.

8. ***Response of NDMC to the judgments relied by the Licensee***

8.1. In ***Dhula Bhai v. State of Madhya Pradesh*** (*supra*) relied upon by the Licensee relates to the Section 17 of Madhya Bharat Sales Tax Act which bars the jurisdiction of the Civil Court. The Supreme Court laid down seven principles in this regard and held that the challenge to the provisions of the Act as ultra vires can be brought before the Civil Court/Writ Court but the correctness of the assessment cannot be considered by the Civil Court in view of the bar of Section 17. This judgment does not help the Licensee as the Licensee is challenging the correctness of the termination of licence which is barred by the Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

8.2. ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay*** (*supra*) relied upon by the Licensee relates to the bar to the jurisdiction of Civil Courts in respect of an industrial dispute under the Industrial Disputes Act. This judgment does not help the Licensee

as the Supreme Court held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

8.3. In ***Raja Ram Kumar Bhargava v. Union of India*** (*supra*), the Supreme Court held that wherever a right is created by a statute and that statue itself provided machinery for the enforcement of the right, the jurisdiction of Civil Court is barred. This judgement also does not help the Licensee who has a remedy to contest the proceedings before the Estate Officer under Sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and against the order of the Estate Officer the Licensee has a remedy of appeal before the District Judge under Section 9.

8.4. In ***Delhi Development Authority v. Darshan Lal*** (*supra*), this Court held the suit for injunction against DDA to be maintainable on the ground that the respondent therein had raised the objection that the subject property was not 'public premises' as defined in the Act. This judgement does not help the Licensee as there is no dispute that the suit premises in the present case are public premises.

8.5. In ***Shiv Kumar Chadha v. Municipal Corporation of Delhi and Others*** (1993) 3 SCC 161, the Supreme Court held a suit to challenge the demolition to be maintainable if the order is nullity in the eyes of law or the order is outside the Act. There is no such challenge in the present case and therefore, this judgement also does not help the Licensee.

8.6. In ***Express Newspaper Pvt. Ltd. v. Union of India*** (*supra*), the Supreme Court held that the property given on perpetual lease by the State is not "public premises" within the meaning of Section 5(1) of the Act and therefore, the State cannot take recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction of a perpetual lessee. The present case admittedly relates to a licence and the premises are "public premises" and therefore, this judgment is not applicable to the facts of this case.

8.7. In ***State of Madhya Pradesh v. Thakur Bharat Singh*** (*supra*), relied by the Licensee, a writ petition was filed to challenge the order and there was no issue of jurisdiction of Civil Courts.

8.8. In ***Thomas Cook (India) Ltd. v. Hotel Imperial,*** 2006 (127) DLT 431 relied upon by the Licensee goes against the Licensee. This Court rejected the contention of the Licensee about the claim of exclusive possession and the plea of Section 60(b) of the Indian Easement Act and that a Licensee cannot claim an injunction against the true owner. The possession continues with the licensor. The Licensee, once the licence is terminated, is only entitled to claim a reasonable time to vacate the premises. The nature of occupancy of a Licensee is clearly permissive and does not amount to possession at all. A licence does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as legal possession continues with the licensor. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for

(43)

the owner retains legal possession while all that the Licensee gets is a permission to use the premises for a particular purpose or in a particular manner but for the permission so given, the occupation would have been unlawful (***Associated Hotels of India Ltd. v. R.N. Kapur***, AIR 1959 SC 162). This Court, while noticing the observations of the Supreme Court in ***Ram Swarup Gupta v. Vishu Narayan Inter College,*** AIR 1987 SC 1242, held that Section 60 is not exhaustive of the situations as to when a licence may be revocable. For instance, the granter of the licence and the Licensee by an agreement may make a licence irrevocable even though none of the two clauses specified under Section 60 are fulfilled. Such an arrangement may be in writing or otherwise and its terms and conditions may be expressed or implied. As a legal principle, what has to be seen is whether in the facts of the present case, the licence was revocable or irrevocable. Upon going through the terms of the compromise decree as set out in detail, it is clear that the licence in question is revocable.

8.9. ***Associated Hotels of India Ltd v. R.N. Kapoor***, AIR 1959 SC 1262, ***Bharat Petroleum Corporation Ltd. v. Municipal Corporation of Delhi***, 64 (1996) DLT 237, ***Sharda Nath v. Delhi Administration***, 149 (2008) DLT 1(DB), ***United India Insurance Co. Ltd. v. Pushpalaya Printers***, (2004)3 SC 694, ***Abdullah Ahmed v. Animendra Kissen Mitter*** AIR 1950 SC 15 relied upon by the Licensee have no application to the present case.

8.10. In ***United bank of India v. Naresh Kumar*** 1996 (6) SCC 660 relied upon by the Licensee, the Bank had instituted a suit for

recovery of a certain amount advanced as loan to the Respondent No.1 for the purpose of his business. The Respondent No.1 executed a demand promissory note and other documents. Respondent no.2 & 3 had stood as guarantors for the repayment of loan. On their default, the said suit was instituted. Respondents in their written statements denied having taken the loan and took a stand that their signatures were taken on blank papers. They also denied authority of the signatory of the plaint. The Trial Court found the Respondents liable to pay the amount but the suit was dismissed on the ground that the signatory was not authorized and competent to file the suit. Both principal debtor and the guarantors were held liable to pay the amount but again dismissed the suit on the ground that the plaintiff has failed to prove the authority of the signatory. The Regular Second Appeal was also dismissed in limine which was challenged before Supreme Court. Before the Supreme Court, the only question arose for consideration was whether the plaint was duly signed and verified by the competent person.

8.11. In ***AMCO Vinyl Ltd. v. Classic Industries*** 190 (2012) DLT 533, relied upon by a Licensee, a suit was filed seeking recovery of certain amount on account of unpaid invoice drawn towards supply of goods. The defendant in the written statement took the stand that the suit has been filed on the basis of forged and fabricated accounts and the statement of account does not reflect the cash payment made to the plaintiff. The authority of the signatory of the plaint was also disputed. The Trial Court dismissed the suit on the ground that the same was not validly instituted and also because the amount claimed

in the suit is different from the total amount in the invoice. The signatory of the suit appeared in the witness box as PW-1 and proved the resolution. The witness was also cross-examined by the defendant. The resolution did not mention regarding power to sign and verify the plaint and thus the suit was dismissed. This Court following ***United Bank of India*** (supra) held that the signatory has been authorized to appoint a lawyer and sign all documents on behalf of the company including making any statement in the Court by the said resolution. In these circumstances, the Court held that suit filed by the companies should not be dismissed on technical grounds once they are pursued to the hilt. In the present case, no evidence was adduced by the plaintiff and the resolution was not proved. This judgement is also distinguishable on facts.

Findings

9. ***Prayer (i) of the suit for declaring clause 3 of the licence deed dated 16th July, 1982 as null and void, is barred by law*** –

9.1. The Licensee has challenged clause 3 of the licence deed dated 16th July, 1982 as null and void on the ground that during the course of construction, the Licensee found the project to be economically unviable and secondly, NDMC was charging lower gross turnover from other hotel chains.

9.2. The challenge to the licence deed is barred by well settled law that in contracts entered into pursuant to public auction or tender, commercial difficulty cannot provide justification for not complying with the terms of the contract. There is no question of State power being used. If a person of his own accord, accepts or contracts on

certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approbates cannot reprobate), according to which a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction. These principles have been laid down in the following judgments:-

9.2.1. In ***Alopi Parshad & Sons v. Union of India***, (1960) 2 SCR 793, the Supreme Court held that the contract is not discharged merely because it turns out to be a difficult to perform or onerous. In that case the agent, appointed by the Government for supply of ghee, claimed enhancement of rates on the ground that the circumstances changed due to the war. The Supreme Court rejected the claim and held as under:

> *"21. ...Performance of the contract had not become impossible or unlawful; the contract was in fact, performed by the Agents, and they have received remuneration expressly stipulated to be paid therein. The Indian Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executor contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate – a wholly abnormal rise or fall in prices, a sudden*

depreciation of currency, an unexpected obstacle to execution, or the like.

xxx xxx xxx

*22. **There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract, merely because on account of an uncontemplated turn of events, the performance of the contract may become onerous.** That is the law both in India and in England, and there is, in our opinion, no general rule to which recourse may be had, as contended by Mr. Chatterjee, relying upon which a party may ignore the express covenants on account of an uncontemplated turn of events since the date of the contract..."*

(Emphasis Supplied)

9.2.2. In ***Panna Lal v. State of Rajasthan***, (1975) 2 SCC 633, the Supreme Court held that a party cannot resile from the contract on the ground that the terms of payment were onerous. The relevant portion of the judgment is as under:

*"21. The licences in the present case are contracts between the parties. The Licensees voluntarily accepted the contracts. They fully exploited to their advantage the contracts to the exclusion of others. The High Court rightly said that **it was not open to the appellants to resile from the contracts on the ground that the terms of payment were onerous. The reasons given by the High Court were that the Licensees accepted the licence by excluding their competitors and it would not be open to the Licensees to challenge the terms either on the ground of inconvenient consequence of terms or of harshness of terms.**"*

(Emphasis supplied)

9.2.3. In ***State Bank of Haryana v. Jage Ram*** (1980) 3 SCC 599 the

Supreme Court held that the Licensee cannot challenge the terms of the licence on the ground that he is finding it commercially inexpedient to conduct his business. The Supreme Court reaffirmed the principles laid down in ***Har Shankar v. Deputy Excise and Taxation Commissioner*** (1975) 1 SCC 737. Relevant portion of the said judgement is reproduced hereunder.

> **14.** *In Har Shankar [(1975) 1 SCC 737, 745-46] appellants' bid was accepted in an auction held on March 23, 1968 for the right to sell country liquor at two vends in Ludhiana. The appellants paid the security deposit but were unable to meet their obligation under the conditions of auction and fell in arrears. When the State demanded the payment, threatened to cancel the licences granted to the appellants and declared its intention to resale the vends, the appellants filed writ petitions in the High Court of Punjab and Haryana asking that the auction be quashed and the respondents be restrained from enforcing the obligations arising under its terms and conditions. The High Court having dismissed the writ petitions, the Licensees filed an appeal to this Court by certificate.*
>
> ***15.*** *What is important for our purpose in this appeal is that the State of Punjab, which was respondent to the appeal in Har Shankar [(1975) 1 SCC 737, 745-46] raised a preliminary objection to the maintainability of the writ petitions filed by the appellants and that objection was upheld by this Court.* ***The preliminary objection was that such of the appellants who offered their bids in the auctions did so with a full knowledge of the terms and conditions attaching to the auctions and that they could not be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids.*** *Holding that the preliminary objection was*

well-founded, this Court observed : (SCC pp. 745-746, para 16)

> *"**Those interested in running the country liquor vends offered their bids voluntarily in the auction held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. Those who contract with open eyes must accept the burdens of the contract along with its benefits.** The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. **Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.**" (p. 263)*

At p. 266 (SCC p. 748) of the Report, the court further observed that the writ jurisdiction of High Courts under Article 226 was not intended to facilitate avoidance of obligations voluntarily incurred.

16.....They entered into a contract with the State authorities with the full knowledge of conditions which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. The occurrence of a commercial difficulty, inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter, can provide no justification for not complying with the terms of the contract which they had accepted with open eyes.

17. The judgment in Har Shankar [(1975) 1 SCC 737,

745-46] was followed in Sham Lal v. State of Punjab [(1977) 1 SCC 336] wherein, appellants were the highest bidders in an auction for the sale of country liquor vends at various places in the State of Punjab. The appellants were called upon by the State to pay the amounts which they were liable to pay under the terms of the auction, whereupon they filed writ petitions in the High Court to challenge the demand. Relying upon the passage from Har Shankar [(1975) 1 SCC 737, 745-46] extracted above, the court held that the Licensees could not be permitted to avoid the contractual obligations voluntarily incurred by them and that therefore the High Court was right in refusing to exercise its jurisdiction under Article 226 of the Constitution in their favour.

***18.** In view of these decisions, the preliminary objection raised by the Solicitor General to the maintainability of the writ petitions filed by the respondents has to be upheld. We hold accordingly that the High Court was in error in entertaining the writ petitions for the purpose of examining whether the respondents could avoid their contractual liability by challenging the Rules under which the bids offered by them were accepted and under which they became entitled to conduct their business. **It cannot ever be that a Licensee can work out the licence if he finds it profitable to do so; and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business**.*

(Emphasis supplied)

One who approbates cannot reprobate

9.2.4. In ***New Bihar Biri Leaves Co. v. State of Bihar*** *(1981) 1 SCC 537*, the Supreme Court held that it is a fundamental principle of general application that if a person of his own accord, accepts or contracts on certain terms and works out

(51)

the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The relevant portion of the judgment is reproduced as under:

> *"48. **It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is qui approbat non reprobat (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction.***
>
> *49. **The aforesaid inhibitory principle squarely applies to the cases of those petitioners who had by offering highest bids at public auctions or by tenders, accepted and worked out the contracts in the past but are now resisting the demands or other action, arising out of the impugned Condition (13) on the ground that this condition is violative of Articles 19(1)(g) and 14 of the Constitution.**"*
>
> *(Emphasis supplied)*

9.2.5. In ***C. Bepathumma v. V.S. Kadambolithaya,*** *1964 (5) SCR 836,* the Supreme Court held that he who accepts a benefit under a deed or will or other instrument must adopt the whole

contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.

9.2.6. In ***Assistant Excise Commissioner v. Issac Peter*** (1994) 4 SCC 104, the Supreme Court held that in cases of contracts entered into with open eyes, a party cannot seek alteration of the terms expressly agreed to, on the ground of financial hardship. The State has no responsibility to ensure profit to everyone who contracts with it. The relevant portion of the judgment is reproduced hereunder:

> *"14.....The contract between the parties is governed by statutory provisions, i.e., provisions of the Act, the Rules, the conditions of licence and the counterpart agreement, they constitute the terms and conditions of the contract.* ***They are binding both upon the Government and the Licensee. Neither of them can depart from them. It is not open to any officer of the Government to either modify, amend or alter the said terms and conditions, not even to the Minister for Excise.***
>
> *21.....**It is not a case where any essential term of contract was kept back or kept undisclosed. The Government had placed all their cards on the table. If the Licensees offered their bids with their eyes open in the above circumstances they cannot blame anyone else for the loss, if any, sustained by them**, nor are they entitled to say that license fee should be reduced proportionate to the actual supplies made.*
>
> *23. Maybe these are cases where the Licensees took a calculated risk. Maybe they were not wise in offering their bids. But in law there is no basis upon which they can be relieved of the obligations undertaken by them under the contract. It is well known that in such contracts — which may be called executory contracts — there is*

always an element of risk. Many an unexpected development may occur which may either cause loss to the contractor or result in large profit. Take the very case of arrack contractors. In one year, there may be abundance of supplies accompanied by good crops induced by favourable weather conditions; the contractor will make substantial profits during the year. In another year, the conditions may be unfavourable and supplies scarce. He may incur loss. ***Such contracts do not imply a warranty — or a guarantee — of profit to the contractor. It is a business for him — profit and loss being normal incidents of a business. There is no room for invoking the doctrine of unjust enrichment in such a situation. The said doctrine has never been invoked in such business transactions. The remedy provided by Article 226, or for that matter, suits, cannot be resorted to wriggle out of the contractual obligations entered into by the Licensees.***

26. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. ***It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the Licensees in such contracts. There is no warranty against incurring losses. It is a business for the Licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its***

money under the contract. It is not as if the Licensees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation. It is not necessary to say more than this for the purpose of these cases."

(Emphasis supplied)

9.2.7. In ***Puravankara Projects Ltd. v. Hotel Venus International,*** (2007) 10 SCC 33, the Supreme Court held that the tender terms are contractual and it is the privilege of the Government which invites its tenders and the Courts do not have jurisdiction to judge as to how the tender terms would have to be framed.

9.2.8. In ***Bharti Cellular Limited v. Union of India*** (2010) 10 SCC 174, the Supreme Court held that no one can approbate and reprobate the same document and anyone who has accepted with full knowledge or notice of facts, benefits under a transaction which he might have rejected or contested, cannot question the transaction or take up an inconsistent position qua the same. Party who has unconditionally accepted the package cannot thereafter reject the inconvenient and onerous conditions while accepting the conditions beneficial to him. Relevant portion of the said judgment is reproduced hereunder:-

"8. ...***A party which has unconditionally accepted the package cannot after such acceptance reject the conditions subject to which the benefits were extended***

to it under the package. It cannot reject what is inconvenient and onerous while accepting what is beneficial to its interests...

9. Relying upon the decision of this Court in City Montessori School v. State of U.P, New Bihar Biri Leaves Co. v. State of Bihar and R.N. Gosain v. YashpalDhir, this Court has in ShyamTelelink Ltd. v. Union of India held that ***no one can approbate and reprobate and anyone who has accepted with full knowledge or notice of facts, benefits under a transaction which he might have rejected or contested, cannot question the transaction or take up an inconsistent position qua the same.*** *We have said: (ShyamTelelink case, SCC p. 172, para 23)*

> *"23. The maxim qui approbat non reprobat (one who approbates cannot reprobate) is firmly embodied in English common law and often applied by courts in this country.* ***It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument."***
>
> *(Emphasis added)*

9.2.9. The principles of law so settled by the Supreme Court in catena of judgments have been again reiterated in ***Mumbai International Airport Pvt. Ltd. v. Golden Chariot Airport*** 2010 (10) SCC 422.

9.2.10. In ***Track Innovations India Pvt. Ltd. v. Union Of India,*** 2010 (170) DLT 424, the Division Bench of this Court held that there cannot be variation of the terms of a commercial contract, which has been acted upon. Government is not

bound to ensure profit in every commercial contract more so when the contract had been awarded either by public auction or by floating tender or negotiations. The Division Bench further noted that a person cannot approbate and reprobate or accept or reject the same instrument. Relevant portion of the said judgment is reproduced hereunder: -

> ***"12. ...we are of the opinion that in commercial contracts, such as the present, where the private contractors enter into these contracts having huge financial stakes, there is no scope for seeking variation of the terms of the contract which have been acted upon on the ground of alleged unreasonableness by invoking Article 14 of the Constitution."***
>
> ***"14. The portions of the above judgments, underlined by us clearly show that in commercial contracts entered into with open eyes, there cannot be variation to the terms of the concluded contract which has been acted upon. Commercial men take commercial decision which sometimes results either in profit or sometimes in loss, however, the Government is not bound to ensure profit in every contracts which are either by public auction or by floating tenders or negotiations. It has been clarified that there is no issue of fairness or arbitrariness with respect to terms of the contract in such commercial contracts."***
>
> *(Emphasis supplied)*

9.2.11. In ***C.J. International Hotels Ltd. v. N.D.M.C.***, AIR 2001 Del 435, this Court held that the Licensee cannot challenge the conditions of the licence if he finds it commercially unviable to conduct his business. Relevant portion of the said judgment is reproduced hereunder:

(57)

"26. As observed above, the plaintiff had offered its bid for taking on licence the land on which the hotel is constructed. ***The terms and conditions of the auction were known to the plaintiffs before the auction was held and the bidders participated in the auction without a demur and with full knowledge of the commitments which the bids involved. The Government's acceptance of those bids was the acceptance of willing offers made to it and on such acceptance the lease agreement was executed between the parties which is binding between them****. The commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of trading transactions.* ***Those who contract with open eyes must accept the burden of the contract alongwith its benefit. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test, no contract could even have a binding force. The plaintiffs entered with full knowledge of conditions, which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. Merely because the plaintiffs are not finding the licence fee payable under the agreement to be viable for purposes of running the hotel, it cannot ever be said that a Licensee can work out the licence if he finds it profitable to do so and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business****."*

(Emphasis supplied)

9.3. The Licensee was well versed with the terms and conditions of the tender at the time of the entering into the contract with the defendant. The Licensee having accepted the terms and conditions of the licence deed and having acted upon the same, is estopped from

challenging the terms and conditions of the licence deed as unconscionable, arbitrary and unenforceable.

9.4. The Licensee submitted the highest bid in the tender for the plot in question and became a successful bidder in respect of that tender and having entered into a contract with open eyes and having acted upon the same, the Licensee cannot wriggle out of the terms of the licence deed. The important point to be noted is that NDMC has not fixed the licence fee payable by the Licensee under the Licence deed. The Licensee has given the highest bid in respect of the licence fee which has been accepted. In that view of the matter, NDMC had no control whatsoever in fixing the licence fee and therefore, the Licensee cannot raise any objection with respect to the licence fee fixed on the basis of highest bid.

9.5. In commercial contracts entered into with open eyes, there cannot be variation to the terms of a concluded contract which has already been acted upon.. The Licensee was under no pressure/force to submit his bid with NDMC in which the Licensee became the highest bidder. It is not the case of the Licensee that the Licensee was unaware of the terms of the tender. The Licensee without any protest agreed to the terms and conditions of the Licence deed and the Licensee was well aware of the liabilities of the Licensee at the time of entering into the contract with NDMC.

9.6. The Licensee never raised any objection to validity of the Licence deed till 1994. The Licensee was in use, occupation, possession and enjoyment of licensed premises since 1981. The Licensee has already acted upon the licence deed. The Licensee is

estopped from challenging the licence deed 13 years after allotment.

9.7. Since the inception of the licence, the Licensee has enjoyed the benefits of the various terms of the said licence deed and therefore, the Licensee cannot challenge the other clauses under which the Licensee is under the liability to pay the agreed rate of licence fee.

9.8. The Licensee cannot accept only those terms of the licence deed that are advantageous to it and deny the terms which puts a liability on it. When the Licensee is willing to take the benefit of the licence deed, then the Licensee is also liable to undertake the liabilities under the said licence deed. The maxim *qui approbat non reprobat* (one who approbates cannot reprobate) is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.

9.9. The Licensee has become unauthorised occupant after the cancellation/termination of the licence and cannot be permitted to challenge the terms of the licence deed that too when the Licensee has derived the benefit from the allotment of the licensed premises for such a long time.

9.10. The burden of proof of Issue No.1 was upon the Licensee. However, the Licensee neither pleaded nor proved any relevant fact to show as to how the contract between the parties is void. The Licensee did not lead any oral evidence despite numerous opportunities and therefore, this Court vide order dated 13th May, 2002, closed the

evidence of the Licensee. As such, the Licensee has miserably failed to discharge the burden imposed upon it.

9.11. Void contracts are defined in Section 2(g) of the Contract Act, 1872 as agreements not enforceable by law such as agreement with unlawful consideration and objects (Section 24), agreement without consideration (Section 25), agreement in restraint of marriage (Section 26), agreement in restraint of trade (Section 27), agreement in restrain of legal proceedings (Section 28), uncertain agreement (Section 29), agreement by way of wager (Section 30). The licence deed dated 16th July, 1982 is a lawful agreement enforceable by law within the meaning of Section 2(h) of the Contract Act, 1872. The charging of lower minimum guarantee amount by the NDMC from other hotel chains does not fall under any of provisions relating to void contracts under the Contract Act.

9.12. The Trial Court did not care to consider the relevant provisions of law to examine as to how the contract between the parties was void. The findings of the Trial Court holding Clause 3 of the licence deed dated 16th July, 1982 as void, are therefore, perverse.

9.13. With respect to the Licensee's plea of comparison with other hotels, the Licensee is not entitled to any benefit as the allotment was done by the tender and admittedly, there was no discrimination in the bidding process. The Supreme Court, in ***Radhakrishna Agarwal v. State of Bihar***, AIR 1977 SC 1496, held that once the agreement is executed, the parties are bound by the terms and conditions of the agreement. Thus, the plea of discrimination is rejected. The relevant portion of para 10 of the judgment is reproduced hereunder:

(61)

> *"10. ... But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."*

9.14. That apart, the Licensee has failed to establish how it is similarly placed with other instances. The size of the plot, the purpose of the licence and the nature of construction in all the cases are different and are not identical. No oral evidence was led by the Licensee to bring on record the comparison between the property in question with the properties involved in the said licence deeds. It is well settled law that in order to claim parity it was mandatory for the Licensee to bring on record the relevant facts namely the advantages and disadvantages attached to the properties involved in the instances with the property in question. The Licensee can claim parity only when the advantages and disadvantages are identical with the land in question. If this exercise has not been undertaken then the method of comparison cannot be adopted. In the present case, the documents sought to be relied by the Licensee for the purpose of comparison were merely exhibited in terms of the order passed by this Court dated 12th September, 2013 in C.M. (M) No.102/2013. These documents

were allowed to be exhibited by this Court with a caveat that the validity of said documents would be considered at the time of hearing of suit. These documents could not have been considered by the Trial Court for comparison.

9.15. On the 03rd August, 2015, the Licensee made a statement before this Court, that the Licensee gives up the prayer (i) of the plaint and therefore, has no objection to the setting aside of the decree granted by the Trial Court declaring the clause 3 of the licence deed dated 21st February, 1995 as void.

9.16. Applying the principles laid down in the judgments discussed above, it is held that the Licensee's prayer (i) for declaring clause 3 of the licence deed dated 1[6th] July, 1982 as null and void, is barred by law.

10. ***Prayer (ii) of the suit for directing NDMC to increase FAR from 100 to 250 not maintainable for want of cause of action***

10.1. So far as prayer (ii) of the plaint is concerned relating to increase of FAR from 100 to 250, clause 12 of the licence deed provides that the FAR can be increased upon increase of licence fee to be decided by NDMC after giving reasonable opportunity to the Licensee. Clause 12 of the licence deed is reproduced hereunder:-

> *"12. The F.A.R. of the land shall not be more than one if the said F.A.R. of one is allowed to be increased at any time the Licensees shall be liable to pay such increased license fee as may be decided by the licensor after giving reasonable opportunity to the Licensees in this behalf."*

10.2. Since the Licensee was admittedly never agreeable to increase of licence fee, there was no cause of action in favour of the Licensee

for increase of FAR. The Licensee has neither pleaded anywhere in the plaint nor proved that Licensee has applied for increase of FAR under clause 12 and was willing to pay the increased licence fee. In that view of the matter, there was no cause of action in favour of the Licensee to seek increase of FAR.

11. ***Prayers (iii) & (iv) of Suit is barred by Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971***

11.1. Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "Public Premises Act") bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of the eviction of any person, who is in unauthorised occupation of the public premises as well as for recovery of arrears of rent, damages and interest payable by such person. Section 15 is reproduced hereunder:

> *"**Section 15. Bar of jurisdiction**—No court shall have jurisdiction to entertain any suit or proceeding in respect of—*
>
> *(a) the eviction of any person who is in unauthorised occupation of any public premises, or*
>
> *(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or*
>
> *(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or*
>
> *[(cc) the sealing of any erection or work or of any public premises under section 5C, or]*
>
> *(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or*
>
> *(e) the recovery of—*

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

11.2. The premises in question are 'public premises' as defined in Section 2(e)(3)(i) of the Act and the Licensee is in unauthorised occupation within the meaning of Section 2(g) of the Act as the license has been determined by the NDMC.

11.3. In the present case, it is not disputed that the premises in question are public premises. **Clause 9** of the License deed dated 16th July, 1982 provides that in the event of the Licensee failing to make the payment of licence fee, interest due thereupon or any other payment due against the licencee for any reason whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further the reference to the licencees to revoke/cancel the licence with immediate effect for running the said hostel in terms of this licence, to take possession of the licensed premised by recourse to law as provided in the Public Premises Act or any other such law in force, at that time, after revocation of the licence and the licencees shall have no claim on the premises.

11.4. **Clause 31** of the License deed further provides that the allotment will be made on licence basis and the licensed premises including building to be constructed will be a public premises within

the meaning of the Public Premises Act or such Act, as may be enforced from time to time in this behalf.

11.5. In ***B. Sharma Rao H. Ganeshmal v. Head Quarters Asstt.*** (*supra*), the petitioners challenged the show cause notice under Section 4(1) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 before the Civil Court on the ground that they were not unauthorised occupants. The Supreme Court held the suit to be barred by Section 15 of the Act on the ground that the Estate Officer was required to determine whether the petitioners were unauthorised occupants or not and the persons feeling aggrieved by such determination, could assail the same in appeal before the appellate authority.

11.6. In ***State of Haryana v. Khalsa Motors Ltd.*** (*supra*), the occupant of the land instituted a suit for declaration that he was the possessory title owner of the land and the State be restrained from dispossessing him from the premises. The suit was defended on various grounds *inter alia* that the premises were public premises and the suit was barred by Section 15 of the Haryana Public Premises (Eviction of Unauthorised Occupants) Act. The Supreme Court held the suit to be barred by Section 15 of the Haryana Public Premises (Eviction of Unauthorised Occupants) Act. The Supreme Court rejected the objection of the occupant that the order of the Collector was a nullity and the suit was maintainable for declaring it void. With respect to the objection that the premises were not public premises, the Supreme Court held that the Collector has the jurisdiction to

determine this question. The Supreme Court further observed that the Act provides a remedy of appeal to the Commissioner against the order of the Collector.

11.7. The Licensee's contention that they have filed a civil suit to challenge the terms of the licence deed because the prayers (i) and (ii) cannot be made before the Estate Officer is without any merit. As held in paras 9 and 10 above, the suit with respect to prayer (i) and (ii) was not maintainable as prayer (i) was barred by law and with respect to prayer (ii), there was no cause of action. The Licensee gave up prayer (i) at the time of final hearing on 3rd August, 2015 meaning thereby the Licensee admitted that prayer (i) was not maintainable in law.

11.8. The Licensee's contention that they have no remedy to challenge the validity and terms of the licence deed is devoid of merit as the Licensee has remedy of contesting the proceedings under Sections 5 and 7 of the Public Premises Act before the Estate Officer. Section 9 provides the remedy of appeal to the Licensee against the order of the Estate Officer. In that view of the matter, suit filed by the Licensee is clearly barred by Section 15 of the Public Premises Act.

11.9. The judgments relied upon by the Licensee, namely, ***Dhula Bhai v. State of M.P.*** *(supra)*, ***Premier Authomobile Ltd. v. Kamlekar Snta Ram Wadke*** *(supra)*, ***Raja Ram Bhargva v. Union of Inida*** *(supra)*, ***DDA v. Darshan Lal*** *(supra)*, ***Shiv Kumar Chaddha v. MCD*** *(supra)*, ***Express Newspaper Pvt. Ltd. v. Union Of India*** *(supra)*, ***Abdul Gafur v. State of Uttarakhand*** (2008) 10 SCC 97 and ***Premier Automobiles Limited v. Kamlekar Shantaram Wadke of***

Bombay (1976) 1 SCC 496 do not help the Licensee. The reasons given by the NDMC in para 8 are accepted.

11.10.In view of the above, I hold that prayers (iii) and (iv) of the suit relating to the permanent injunction for restraining NDMC from re-entering the suit property or taking any action in pursuance of the order of the cancellation dated 21st February, 1995 and from interfering, obstructing or affecting the electricity, water supply and other amenities to the Licensee, are barred by Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

12. The Trial Court had no jurisdiction to quash the termination notice dated 21st February, 1995 which prayer was not even sought by the Licensee. In ***Union of India v. Ibrahim Uddin*** (2012) 8 SCC 148 the Supreme Court held that the Court cannot travel beyond the pleadings as no party can lead evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or finding of fact has been recorded by the Court, it is just to be ignored. Following the aforesaid judgment, the finding of the Trial Court is set aside as perverse and without jurisdiction.

13. ***Section 60(b) of the Easements Act, 1882 is not applicable since Licence deed dated 16th July, 1982 is revocable***: –

13.1. The Licensee is claiming the licence to be irrevocable on the ground that the Licensee has constructed the permanent structure on the licensed plot. However, from the conjoint reading of Clauses 1, 9, 10, 11, 18, 19, 20(xii), 21(b), 31, 47 and 48 of the licence deed, it is clear that the licence in question is revocable. Clause 9 of the

agreement authorizes and empowers the licensor to revoke the licence in the event of the Licensee failing to make the payment of licence fee and the interest due thereupon or any other payment due against the Licensee for any reason whatsoever and to take the possession of the licence premises by recourse to the law as provided in the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Clause 10 of the licence deed stipulates that the land for construction and youth hostel would continue to vest in the licensor in whom the building so constructed shall also vest. Clause 11 provides for termination for breach of any terms and conditions of the licence deed. Clause 20(xii) of the licence deed stipulates that the Licensee is not liable to pay house tax on the land and building as the same vest in the licensor for all intents and purposes. Clause 21(b) of the licence deed also empowers the NDMC to re-enter upon the land and building in the event of any breach or default of the performance of the licence deed. Clause 29 provides that the building to be constructed by the Licensee shall at all time vest in the Licensor together with all fittings, fixtures and other installations. Clause 31 of the agreement further makes it clear that the allotment is made on licence basis and the licenced premises including building to be constructed will be a public premises within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Clauses 47 and 48 empower the Licensor to terminate and revoke the licence in the event of the breach of the terms of the licence deed. All these terms of the agreement reflect the clear intention of the parties to the same. Notwithstanding the construction to be made by the Licensee, the parties had

specifically agreed the licence to be a revocable licence and to be governed by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act 1971. The licence granted to the Licensee was agreed to be terminable by the licensor in the event of non-payment of licence fee and other dues by the Licensee, the licensor is empowered and entitled to recover the possession of the premises under the Public Premises (Eviction of Unauthorized Occupants) Act 1971.

13.2. The law on this subject is well settled that if the licence deed expressly records the licence to be revocable, construction of permanent structure would not make the licence irrevocable. The relevant judgments in this regard as under:-

13.2.1. In ***Ram Sarup Gupta v. Bishun Narain Inter College*** *(1987) 2 SCC 555,* the Supreme Court held that Section 60 of the Easements Act, 1882 in not exhaustive and the parties can stipulate a licence to be revocable. The relevant para is as under:-

> *"9. ... Section 60 provides that a licence may be revoked by the grantor unless: (a) it is coupled with a transfer of property and such transfer is in force; (b) the Licensee, acting upon the licence, has executed a work of permanent character and incurred expenses in the execution. Revocation of licence may be express or implied. Section 62 enumerates circumstances on the existence of which the licence is deemed to be revoked. One of such conditions contemplates that where licence is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the licence shall be deemed to be revoked. Sections 63*

and 64 deal with Licensee's right on revocation of the licence to have a reasonable time to leave the property and remove the goods which he may have placed on the property and the Licensee is further entitled to compensation if the licence was granted for consideration and the licence was terminated without any fault of his own. These provisions indicate that a licence is revocable at the will of the grantor and the revocation may be expressed or implied. Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the Licensee acting upon the licence executes work of permanent character and incurs expenses in execution. ***Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the Licensee making the licence irrevocable, even though, neither of the two clauses as specified under Section 60 are fulfilled****. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Haque v. Standard Vacuum Oil Co. [55 CWN 232] the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the Licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence (as contemplated by Section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in Dominion of India v. Sohan Lal [AIR 1955 EP 40]. Bombay High Court has also taken the same view in M.F De Souza v. Childrens Education Uplift Society [AIR 1959 Bom 533].* ***The***

parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. *A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence."*

(Emphasis supplied)

13.2.2. In ***Corporation of Calicut v. K Sreenivasan,*** AIR 2002 SC 2051, the Supreme Court explained the right of a Licensee to occupy the premises in respect of which the Licence is granted, in as under:

"16. It is true that a Licensee does not acquire any interest in the property by virtue of grant of Licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of Licence, he continues to exercise that right so long the authority has not expired or has not been determined for any reason whatsoever, meaning thereby so long the period of Licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of the Licensee is permissive by virtue of the grant of Licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the Licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise. ..... So far as the case of lease of a public building is concerned, upon expiry of the period limited thereby or

its determination in accordance with law, the special procedure prescribed under the Act providing speedy remedy for eviction would apply even though some interest in the immovable property is created in favour of the lessee by virtue of creation of lease in his favour. But in a case of Licence, no interest in the property is created by virtue of the grant, but a person acquires a right to continue his occupation by virtue of the authority granted in his favour under the Licence unless the period of Licence has expired or the same has been determined or Licence has been revoked and/or the Licensee is evicted by the grantor."

13.2.3. In ***Mumbai International Airport Private Limited v. Golden Chariot Airport***, (2010) 10 SCC 422, the Supreme Court considered the terms of the licence of the Licensee and held the same to be revocable. The Supreme Court rejected the argument of the Licensee that the licence was irrevocable on the ground that the Licensee had made construction in the premises. The Supreme Court further observed that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder have been made applicable to the licence agreement. Relevant portion of the said judgment is reproduced hereunder:

"3. Some of the clauses of the said licence agreement are relevant as one of the arguments advanced by the contesting respondent, before the Estate Officer, the High Court and this Court is that the licence is irrevocable. It has also been urged by the contesting respondent, that apart from the licence agreement, there has been an oral extension of the licence and the contesting respondent was assured that it is irrevocable, and on the basis of

such assurance, it has invested considerable money in building the restaurant.

It is clear from what is extracted above that the licence is not irrevocable. Apart from that it is clear that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Rules framed thereunder have been made applicable to the licence agreement."

"39. The very idea of a licence being irrevocable is a bit of a contradiction in terms. ***From the clauses of the licence referred to above, it is clear that by its terms the licence is revocable. It is well known that a mere licence does not create any estate or interest in the property with which it is concerned. Normally a licence confers legality to an act, which would otherwise be unlawful. A licence can be purely personal, gratuitous or contractual. Whether a contractual licence is revocable or not, would obviously depend on the express terms of the contract. A contractual licence is normally revocable, except in certain circumstances that are expressly provided for in the Easements Act, 1882.***

40. A Licence has been defined in Section 52 of the Easements Act, 1882 as a right to do or continue to do in or upon the immovable property of the grantor something, which, in the absence of such right, could be unlawful, but such right does not amount to an easement or an interest in the property. (See Muskett v. Hill1, Bing p. 707 and Heap v. Hartley, Ch D p. 468.)"

(Emphasis supplied)

13.2.4. In ***B.K. Bhagat v. New Delhi Municipal Council***, 2015 SCC OnLine Del 9629, this Court held the licence to be revocable in view of Clause 24 which expressly recorded the licence to be revocable. This Court further held that the scope of judicial review of decisions in commercial matters is very limited,

unless it is shown that the decision is so arbitrary or irrational that no responsible person could have arrived at such decision, the Courts would not interfere. When no public interest is involved and dispute is, clearly, a commercial dispute and the respondent is not fettered in any manner to maximise its gains from its property, no interference under Article 226 of the Constitution of India is called for in such matters. Relevant portion is reproduced as under:-

> *"33. However, **it is difficult to accept that licence granted to the petitioner was irrevocable; Clause 24 of the Licence Deed expressly records that the Licence is revocable.** Admittedly, the initial term of the licence has elapsed and the respondent has - whether rightly or otherwise - unequivocally declined to renew the licence except in terms of its offer, which has admittedly not been accepted.*
>
> xxx xxx xxx
>
> *51. ... **It is well established that the quantum of the licence fee to be charged by the respondent for use of its premises is a matter of commercial perception and courts would normally not interfere in the commercial discretion exercised by the State. According to the petitioner, the respondent had arrived at the said rate based on the fees payable by five star hotels in the vicinity and this was arbitrary. In my view, the respondent is entitled to take a decision with regard to the potential of the said premises and the courts cannot supplant their opinion over that of the executive.**"*
>
> *(Emphasis Supplied)*

13.2.5. In ***State of Madhya Pradesh v. Abdul Rahim Khan*** 1974 MPLJ 7767 (8), the Madhya Pradesh High Court held that

generally when the Licensee acting under the terms of licence had made a permanent structure the licence was irrevocable, but parties might contract otherwise and if the contract conferring licence provided that the licence could be terminated under certain circumstances even though the Licensee had made a permanent structure, Section 60(b) would not be a bar for the licensor to terminate the licence in accordance with the contract.

13.2.6. In ***Bhagwauna v. Sheikh Anwaruzzaman*** 1980 ALL L.J. 368 the Allahabad High Court held that a Licensee who has agreed in expressed terms to vacate the land whenever asked by the owner is precluded from raising the plea that his construction is protected under Section 60(b) of the Easements Act.

13.3. Applying the principles laid down in the judgments discussed above, I hold that the licence deed dated 16th July, 1982 is revocable. The Licensee's contention that the licence is irrevocable under section 60(b) of the Indian Easements Act, 1882 on the ground of having made permanent construction, is contrary to the well settled law and is rejected. The contention of the Licensee that the terms of the licence constitute an irrevocable licence in favour of the Licensee is also misconceived and is rejected.

14. ***The Licensee has neither valued the suit appropriately nor paid the Court fees on the amount in dispute***

14.1. It is well settled that the Licensee was required to value the suit for the purposes of Court fees and jurisdiction on the basis of the

amount involved. At the time of institution of the suit, NDMC had demanded Rs.3,05,67,355.20 from the Licensee which the Licensee was seeking to avoid and, therefore, the Licensee was required to value the suit for the purposes of Court fees and jurisdiction as Rs. 3,05,67,355.20. However, the Licensee has arbitrarily valued the suit at Rs.5,05,000, which is not proper. Taking the value of the suit for the purposes of Court fees and jurisdiction to be Rs. 3,05,67,355.20, the Trial Court had no pecuniary jurisdiction to entertain and try the suit.

14.2. In ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India*** AIR 1975 Delhi 270, the plaintiff valued the suit for the purposes of jurisdiction at Rs.1,40,000/- being the amount threatened to be recovered from them. However, the value of the suit for the purposes of Court fees was fixed at Rs.33/-. This Court held the plaintiff liable to pay Court fees on the amount of liability from which the plaintiff seeks to be relieved. The relevant portion of the said judgment is reproduced hereunder: -

> *"6. The plaintiff, fixed the value of the suit for the purposes of jurisdiction at Rs.1,40,000/- being the amount threatened to be recovered from it. The plaintiff, however, stated that the value of the suit for the purposes of the court-fee being fixed, affixed a court-fee of Rs. 33/-on the suit.*
>
> *8. In the instant case the plaintiff are not only asking merely for a declaration that there was no valid contract between the parties or that by the non-acceptance of the advance sample by the defendants, the contract of supply has come to an end and that the breach of the contract was on the part of the defendants and stood frustrated by their acts,* ***the plaintiff seek the substantial relief for avoiding its liability***

(77)

under the contract by seeking an order from the Court restraining the defendants from effecting the recovery of the sum of Rs. 1,40,000/- from the plaintiff.

*10. **In the instant case, as already noted above, the plaintiff seek an order from this Court restraining the defendants from effecting the recovery of Rs. 1,40,000/- for which amount the plaintiff is sought to be made liable under the contract dated 4th June. 1968, on account of the risk purchase made by the defendants. The value for the purposes of relief, in the circumstances, shall be value of the liability from which the plaintiff seek to be relieved.***

*13. In the instant case the defendants claim a sum of Rs. 1,40,000/- on account of risk purchase alleged to have been made by them in terms of the cancelled contract vide risk purchase acceptance of Tender dated 29th July, 1969 on the stores of the same specification as in the cancelled Acceptance of Tender. The plaintiff seek to avoid this liability which, but for the suit, is being enforced against him. The plaintiff want to be relieved of this liability. **The relief sought by the plaintiff has a real money value which is a definite amount sought to be recovered by the defendants. That being so, the amount sought to be recovered would be the value of the relief claimed by the plaintiff and the court-fee payable must be ad velorem court-fee on the amount of the liability from which the plaintiff seek to be relieved.**"*

(Emphasis supplied)

14.3. In ***Rampur Distillery and Chemicals Co. Ltd. v. Union of India*** 1995 (57) DLT 642, the plaintiff valued the suit for declaration of Rs.1 lakh and for injunction at Rs.1,000/-. This Court noted that the plaintiff was seeking to avoid payment of Rs.5,24,790/- to the defendant and, therefore, the plaintiff was liable to pay the Court fees of Rs.5,24,790/-. Relevant portion of the said judgment is reproduced hereunder: -

"1. The Court in deciding the question of Court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for; mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for—observed their Lordship in Shamsher Singh v. Rajinder Prashad & Ors., AIR 1973 SC 2384. So is the view taken by Full Bench of Delhi High Court in Mahant Purushottam Dass & Ors. v. Har Narain & Ors., AIR 1978 Delhi 114.

xxx xxx xxx

6. The facts stated in the plaint show the plaintiff having entered into a contract with the Union of India for supplying certain commodity. The contract has failed. The defendant has exercised its right under the risk purchase clause, consquent to which a recovery in an amount of Rs. 5,24,790/- is outstanding against the plaintiff. By filing of the suit the plaintiff seeks to get rid of the contract and also avoid payment of Rs. 5,24,790/- to the defendant. Ad valorem court fee has not been paid by the plaintiff.

7. The suit filed by the plaintiff is governed by Sections 7(iv)(c) of the Court Fees Act, 1870. In such suits, the amount of court fee payable has to be concluded on the amount at which the relief sought is valued in the plaint or memorandum of appeal. The plaintiff has to state the amount at which he values the relief sought.

*11. **The injunction sought for by the plaintiff seeks avoidance of a specified money liability to the tune of Rs. 5,24,790/-. The plaintiff is liable to pay ad valorem court fee on this amount.**"*

(Emphasis supplied)

14.4. In ***M/s Maharaji Education Trust v. Punjab and Sind Bank*** 2006 (127) DLT 161, the plaintiff paid a fixed Court fees of Rs.20/- in a suit where the said matter of the dispute was to the tune of Rs.24

crores. This Court held the plaintiff liable to pay the Court fees on Rs.24 crores. The relevant portion of the said judgment is as under: -

> *"28. ...The obvious attempt on the part of the plaintiffs is to stop the recovery in furtherance to the order of the Debts Recovery Tribunal and enforce the letter dated 23rd July, 2005, which is stated to be the settlement, settling the claim of the bank for a sum of Rs. 24 crores. In any event the subject matter of the suit relates to the said letter which is for settlement for a sum of Rs. 24 crores. As such the plaintiffs are trying to settle their accounts and are wanting to invoke the agreement which according to the plaintiffs is a concluded contract, and they are to pay the court fee, which is the ad valorem court fee, ex facie payable on such documents. By praying for injunction of a letter declining such a request on the basis that there is a binding contract founded on the principle of estoppel, what the plaintiff prays is enforcement of a contract which is for a consideration of Rs. 24 crores. It is not a case of claiming the relief of declaration simplicitor, but in substance, is to enforce the agreement alleged to have been entered into between the parties and prevent the bank from acting in furtherance to the order of recovery as well as for the letter dated 22nd August, 2005 to be declared void and malafide, thus, enforcing the settlement dated 23rd July, 2005, which of course has to be examined on its own merits during the course of the trial. But the obligation on the part of the plaintiff to pay ad valorem court fee is an irresistible conclusion on the basis of the judgments afore-stated. Judgment in the case of Shamsher Singh (supra) has been correctly relied upon by the counsel appearing for the defendants. In that case the Supreme Court took the view that a suit by a son against his father and the mortgagee/decree holder for a declaration that the mortgage executed by the father in respect of the joint family property was null and void for want of legal necessity and consideration, though*

couched in a declaratory form, is in substance a suit either for setting aside the decree or for a declaration with consequential relief of injunction and as such the court fee under Section 7 (iv) (c) payable is ad valorem. ***The Court also took the view that the court while deciding the question of court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for and mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.***"

(Emphasis supplied)

14.5. A perusal of the plaint as a whole and in particular paragraphs 29 and 33, it is clear that the Licensee has sought to get rid of clause 3 of the licence deed and to avoid the payment of Rs.3,05,67,355.20 to the NDMC. The liability in term of the demand letters was known to the Licensee. This is not a case where the claim was incapable of any valuation and as such, liable to be arbitrary valued. The claim in such a suit being capable of definite valuation, the Licensee cannot put any arbitrary valuation and such valuation is rejected. Thus, the Licensee was required to value to the suit at Rs. 3,05,67,355.20 and pay *ad valorem* Court fees upon the same.

14.6. At the time of final hearing, the Licensee did not dispute the under-valuation of the suit and agreed to pay the deficient Court fees. However, the payment of the deficient Court fees would not cure the defect of pecuniary jurisdiction of the Trial Court as admittedly, the Trial Court did not have pecuniary jurisdiction to entertain and try a suit with the valuation of Rs. 3,05,67,355.20. I therefore hold that the Licensee had not valued the suit properly for the purposes of Court fees as well as suit valuation and the Trial Court had no pecuniary

jurisdiction to entertain and try the suit.

15. The licence deed dated 16th July, 1982 does not suffer from any arbitrariness. Under Section 141(2) of the NDMC Act, NDMC is entitled to adopt a procedure by which it can get maximum return on its properties as held by the Supreme Court in ***Aggarwal & Modi Enterprises Pvt. Ltd. v. New Delhi Municipal Council*** (2007) 8 SCC 75 as under:-

> *"**22.** The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, **NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property**.*
>
> ***23.** Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach."*

(Emphasis supplied)

16. With respect to findings of the Trial Court on the interpretation of the term "Gross turnover", it is noted that there are no pleadings in the plaint, there is no prayer for the same in the plaint, no issue was framed by the Court and no evidence was led by the parties. In fact, the Licensee sought amendment of the plaint at the stage of final arguments to set up a new plea of interpretation of the term "Gross turnover" which was declined. In that view of the matter, the Trial Court had no jurisdiction to interpret the term "Gross turnover" and the findings of the Trial Court are set aside as perverse and without jurisdiction. Even otherwise, there is no merit in the Licensee's contention as NDMC has adopted the 'Gross Turnover' determined by the Licensee in their own audited accounts in terms of clause 5 of the licence deed. The balance sheets of the Licensee for the year ending 31st March, 2014 filed in the Writ Petition reflects the admitted licence fee of Rs.35,31,52,823/- payable by the Licensee. The balance sheets further reveal that the Licensee has shown the licence fee as expenses, deducted from gross income and has thereby derived the tax benefits from the Income Tax authorities.

17. The Licensee did not lead any oral evidence to prove the authority of the person who signed, verified and instituted the suit. The Licensee did not even prove the Board resolution of the Licensee. In that view of the matter, finding of the Trial Court is not based on any admissible evidence. At the time of final hearing, the Licensee submitted that additional evidence may be permitted to prove the

Board resolution, meaning thereby the Licensee admitted that the finding of the Trial Court is not correct. Since the Licensee's suit is barred by law, this Court is not basing the dismissal of the suit on this ground and therefore, the judgments relied upon by the parties are not being discussed.

18. The Trial Court has completely ignored the loss to public exchequer caused by the Licensee. As of today, the Licensee is liable to pay outstanding dues of Rs.122 crores and NDMC is not able to recover the said amount because of impugned judgment and decree. After cancellation of its allotment, the Licensee became unauthorised occupant of the property and liable to pay damages @ 30% above the licence fee.

19. The Licensee did not lead any evidence before the Trial Court despite number of opportunities granted. In that view of the matter, the Trial Court was required to consider the documentary evidence mentioned in para 2.16 above and the applicable law. The findings of fact of the Trial Court are not based on any evidence and are therefore clearly perverse. The findings of law are in violation of the well settled law.

20. ***Judicial precedents must be applied with reference to the facts of the case***

20.1. The judgments relied upon by the Licensee, namely, ***Dhula Bhai v. State of M.P.*** *(supra)*, ***Premier Automobile Ltd. v. Kamlekar Santa Ram Wadke*** *(supra)*, ***Raja Ram Bhargva v. Union of Inida*** *(supra)*, ***DDA v. Darshan Lal*** *(supra)*, ***Shiv Kumar Chaddha v. MCD***

(supra), ***Express Newspaper Pvt. Ltd. v. Union Of India*** *(supra)*, ***Bai Hanifa Jusab v. Memon Das A Gani Sardharia*** *(supra)*, ***Malarvizhi Elangovan v. Director of Estates*** *(supra)*, ***Thomas Cook (India) v. Hotel Imperial & Ors.*** *(supra)*, ***Bishan Das v. State of Punjab*** *(supra)*, ***Amco Vinyl Ltd. v. Classic Industries*** *(supra)*, ***United Bank of India v. Naresh Kumar*** *(supra)* do not help the Licensee for the reasons given by the NDMC in paras 6 and 8 which are hereby accepted and are not being repeated herein for the sake of brevity. The other judgments cited by the Licensee do not support the Licensee. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

20.2. In ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533 the Supreme Court held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Supreme Court held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

20.3. In ***Bharat Petroleum Corporation Ltd*** **v.** ***N.R. Vairamani,*** (2004) 8 SCC 579, the Supreme Court held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight

to be given to the language actually used by that most distinguished judge..."

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said, "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in Shepherd Homes Ltd. v.Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in Herrington v.British Railways Board [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*
>
> * * *
>
> *Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of*

obstructions which could impede it.""

21. With respect to the contentions raised by learned senior counsel for NDMC in paras 6.18, 6.19, 6.20, 6.22 and learned senior counsel for the Licensee in paras 7.7, 7.8 and 7.9, this Court is of the view that no specific issue was framed in respect thereof, there was no prayer in the plaint and no evidence was led by the parties. That apart, the suit itself is barred by law. This Court therefore does not consider it necessary to deal with the above submissions of the parties.

22. ***Consequences of the Trial Court disregarding well settled law***

22.1. If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts. The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below.

22.2. In ***East India Commercial Co. Ltd.* v. *Collector of Customs*, Calcutta,** AIR 1962 SC 1893, Subba Rao, J. speaking for the majority observed reads as under:

> *"31. .....This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared under Art. 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate*

*cases any Government within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. **We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.**"*

(Emphasis supplied)

22.3. The above legal position was reiterated in ***Makhan Lal* v. *State of Jammu and Kashmir***, (1971) 1 SCC 749, in which Grover, J. observed (at page 2209)—

> ***"6. The law so declared by this Court was binding on the respondent-State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not in the previous petition."***
>
> *(Emphasis supplied)*

22.4. In ***Baradakanta Mishra Ex-Commissioner of Endowments* v.**

Bhimsen Dixit, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

> ***"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law"***
>
> (Emphasis supplied)

22.5. In ***Re: M.P. Dwivedi & Ors.***, (1996) 4 SCC 152, the Supreme Court initiated *suo moto* contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court against handcuffing of under-trial prisoners.

The Supreme Court held this to be a serious lapse on the part of the Magistrate, who was expected to ensure that basic human rights of the citizens are not violated. The Supreme Court took a lenient view considering that Judicial Magistrate was of young age. The Supreme Court, however, directed that a note of that disapproval to be placed in his personal file. Relevant portion of the said judgment is reproduced hereunder: -

> *"22. ... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. **We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.**"*
>
> (Emphasis supplied)

22.6. In ***T.N. Godavarman Thirumulpad v. Ashok Khot,*** (2006) 5 SCC 1, the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial

system rests and observed as under:-

> ***"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with."***
>
> (Emphasis supplied)

22.7. In ***Maninderjit Singh Bitta v. Union of India***, (2012) 1 SCC 273, the Supreme Court held as under:-

> ***"26. ... Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests.*** *The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs...*
>
> *xxx xxx xxx*
>
> ***29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt.*** *Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. ...* ***Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding.***

Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period."
(Emphasis supplied)

22.8. In ***Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra*** (2012) 9 SCC 1, the Supreme Court directed that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings. The relevant portion of the judgment is reproduced hereunder:

"484. We, therefore have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. ***We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear***

that any failure to fully discharge the duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings."

(Emphasis supplied)

22.9. In ***Priya Gupta* v. *Addl. Secy. Ministry of Health and Family Welfare and others***, (2013) 11 SCC 404, the Supreme Court held as under:-

> "***12.*** *The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. East India Commercial Co. Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .) (SCC p. 57, paras 90-91)*

13. These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.

xxx *xxx* *xxx*

19. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. ***To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained.*** *Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties.*

Such distinction, if permitted, shall be opposed to the basic rule of law.

xxx *xxx* *xxx*

23. ... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified..."

(Emphasis supplied)

22.10.In ***Subrata Roy Sahara v. Union of India*** (2014) 8 SCC 470, the Supreme Court held that the decisions rendered by the Supreme Court have to be complied with by all concerned. Relevant portion of the said judgment is as under: -

"17. There is no escape from, acceptance, or obedience, or compliance of an order passed by the Supreme Court, which is the final and the highest Court, in the country. Where would we find ourselves, if the Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the concerned government or instrumentality, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though

preposterous, is not far-fetched. In view of the functional position of the Supreme Court depicted above, non-compliance of its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning, It would be a mayhem of sorts.

185.2. ***Disobedience of orders of a Court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders, and also, the power to punish for contempt.***"

22.11.In ***State of Gujarat*** **v.** ***Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya***, 1982 CriLJ 2255, the Division Bench of the Gujarat High Court summarized the principles as under:-

"11. From the above four decisions, the following propositions emerge:

(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;

(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position,

proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."

(Emphasis supplied)

22.12. In the present case, the Trial Court has dared not to follow the well settled law laid down in ***Alopi Parshad & Sons v. Union of India*** *(supra)*, ***Panna Lal v. State of Rajasthan*** *(supra)*, ***State Bank of Haryana v. Jage Ram*** *(supra)* ***Har Shankar v. Deputy Excise and Taxation Commissioner*** *(supra)****New Bihar Biri Leaves Co. v. State of Bihar*** *(supra)*, ***C. Bepathumma v. V.S. Kadambolithaya, Assistant Excise Commissioner v. Issac Peter*** *(supra)*, ***Puravankara Projects Ltd. v. Hotel Venus International*** *(supra)*, ***Bharti Cellular Limited v. Union of India*** *(supra)*, ***Mumbai International Airport Private Limited v. Golden Chariot Airport***, *(supra)*, ***Track Innovations India Pvt. Ltd. v. Union Of India,*** *(supra)*, ***C.J. International Hotels Ltd. v. N.D.M.C.,*** *(supra)*, ***State of Haryana. v. Khalsa Motors Ltd.*** *(supra)*, ***B. Sharma Rao H. Ganeshmal v. Head Quarters Asstt.*** *(supra)*, ***Union of India v. Ibrahim Uddin*** *(supra)* ***Ram Sarup Gupta v. Bishun Narain Inter College*** *(supra)* ***Corporation of Calicut v. K Sreenivasan*** *(supra)*, ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India*** *(supra)* ***Rampur Distillery and Chemicals Co. Ltd. v. Union of India*** *(supra)* ***M/s Maharaji Education Trust v. Punjab and Sind Bank*** *(supra)* and ***Aggarwal and Modi Enterprises Pvt. Ltd. v.***

New Delhi Municipal Committee (supra),

23. ***Judgment passed by a Court having no jurisdiction is a nullity***

23.1. It is well settled that any judgment or order passed without jurisdiction is a nullity. In ***Kiran Singh v. Chaman Paswan***, AIR 1954 SC 340, the Supreme Court observed as follows:-

> *21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*
> *"Fraud avoids all judicial acts, ecclesiastical or temporal."*
>
> *"6. ...It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*
>
> *(Emphasis supplied)*

23.2. In ***Harshad Chiman Lal Modi v. DLF Universal Ltd.*** (2005) 7 SCC 791, the Supreme Court held that an order passed by a Court having no jurisdiction is a nullity. The relevant portion of the judgment is as under:

> *"It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without*

jurisdiction is a coram non judice."

23.3. In ***Hasham Abbas Sayyad v. Usman Abbas Sayyad***, (2007) 2 SCC 355, the Supreme Court reiterated the above principles as under:-

> *"22.* ***The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so****. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be gien effect to.*
>
> *(Emphasis supplied)*

23.4. In ***A.V. Papayya Sastry v. Government of A.P.***, (2007) 4 SCC 221, the Supreme Court held that a judgment obtained by playing fraud on the Court is a nullity. The relevant portion is as under:-

> *"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*
>
> *"Fraud avoids all judicial acts, ecclesiastical or temporal."*
>
> ***22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.***
>
> *23. In the leading case of Lazarus Estates Ltd. v. Beasley [(1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502 (CA)] Lord Denning observed: (All ER p. 345 C)*
>
> *"No judgment of a court, no order of a Minister, can be*

allowed to stand if it has been obtained by fraud."

24. *In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.*

25. *It has been said: fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

26. ***Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another.*** *Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.*

27. *In S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1] this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court,*

however, set aside the order of the trial court, observing that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. *Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as "wholly perverse", Kuldip Singh, J. stated: (SCC p. 5, para 5)*

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

29. *The Court proceeded to state: (SCC p. 5, para 6)*

"A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

30. *The Court concluded: (SCC p. 5, para 5)*

"The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants."

XXX XXX XXX

39. ***...Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the***

final court. And it has to be treated as non est by every court, superior or inferior."

(Emphasis supplied)

23.5. In the present case, the Trial Court had no jurisdiction to hear the matter. Applying the principles laid down by the aforesaid judgments, I hold that the impugned judgment passed by the Trial Court without jurisdiction is nullity.

24. ***Truth should be the Guiding Star in the entire Judicial Process***

24.1. It is the duty of the Court to ascertain the truth. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

24.2. ***Krishna Iyer*** **J.** in ***Jasraj Inder Singh*** **v.** ***Hemraj Multanchand***, (1977) 2 SCC 155 described truth and justice as under:

*"8. ...**Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness.** This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."*

(Emphasis supplied)

24.3. In ***Union Carbide Corporation*** **v.** ***Union of India,*** (1989)

3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said :

> *"Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words* ***Truth and Justice*** *need not be defined in order to be understood in their true sense.* ***They bear within them a shining beauty and a heavenly light.*** *I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial...."*
>
> *(Emphasis supplied)*

24.4. In ***Mohanlal Shamji Soni*** **v.** ***Union of India,*** 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

24.5. In ***Chandra Shashi*** **v.** ***Anil Kumar Verma,*** (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated

falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. **People would have faith in Courts when they would find that truth alone triumphs in Courts.**

24.6. In ***Zahira Habibullah Sheikh*** **v.** ***State of Gujarat***, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that **discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.**

24.7. In ***Himanshu Singh Sabharwal*** **v.** ***State of Madhya Pradesh***, (2008) 3 SCC 602, the Supreme Court held that the trial should be a search for the truth and not about over technicalities. The Supreme Court's observation are as under:

> *"5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as 'one of the ablest judgments of one of the ablest judges who ever sat in this Court', Vice-Chancellor Knight Bruce said [Pearse v. Pearse, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-29):*
>
> > *"31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them.*

*The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... **Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.***

xxx xxx xxx

35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'.

(Emphasis Supplied)

24.8. In ***Maria Margarida Sequeria Fernandes* v. *Erasmo Jack de Sequeria***, (2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice. The Supreme Court stressed that Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. The Supreme Court observed as under:

"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.
*33. **The truth should be the guiding star in the entire judicial process.Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.***

xxx xxx xxx

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

xxx xxx xxx

"43. "Satyameva Jayate" (literally "truth stands invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon Independence of India, it was adopted as the national motto of India. It is inscribed in Devnagri script at the base of the national emblem. The meaning of the full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of truth resides."

51. In the administration of justice, Judges and lawyers play equal roles. Like Judges, lawyers also must ensure that truth triumphs in the administration of justice.

*52. **Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object.**"*

(Emphasis supplied)

24.9. In the present case, the facts are not at all in dispute. It is not in dispute that M/s PSJ Housing Enterprises Pvt. Ltd., participated in the public tender and the bid of M/s PSJ Housing Enterprises Ltd. was declared as the highest bid and NDMC accepted the said highest bid. It is also not in dispute that as per the mutual agreement between the parties, the Licensee floated a Public Limited Company namely, M/s

Prominent Hotels Ltd., and a licence deed was executed between the parties on 16th July, 1982. It is also not in dispute that the Licensee accepted and worked upon the licence deed dated 16th July, 1982. All the relevant documents namely the licence deed dated 16th July, 1982, show-cause notices dated 15th June, 1994; 09th September, 2014; 23rd December, 1994 and the cancellation letter dated 21st February, 1995 are admitted and marked as Ex.D-1, P-2, P-3 and P-4 respectively. There is no dispute that the relationship between the parties was of Licensor and Licensee. No oral evidence has been led by the parties. As such, the Trial Court was not required to do anything to discover the truth. The Trial Court was required to just apply the well settled law which was placed on record. However, the Trial Court has utterly failed in its duty of applying the binding law to the facts of the case doing the justice on the basis of truth.

25. ***False claims and defences***

25.1. In ***T. Arivandandam v. T.V. Satyapal and Anr.*** (1977) 4 SCC 467, the Supreme Court held that frivolous and manifestly vexatious litigation should be shot down at the very threshold. Relevant portion of the said judgment is as under.

> *".....The learned Munsif must remember that if on a meaningful- not formal- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of*

action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. ***The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them*****.....**"

(Emphasis supplied)

25.2. In ***S.P. Chengalvaraya Naidu v. Jagannath***, (1994) 1 SCC 1 the Supreme Court held that a person, who's case is based on falsehood, has no right to approach the Court and he can be thrown out at any stage of the litigation. The Supreme Court held as under:

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. ***One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely.*** "

25.3. In ***Ramrameshwari Devi v. Nirmala Devi & Ors.*** (2011) 8 SCC

249, the Supreme Court considered the use of civil litigation by unscrupulous litigants to the prejudice, harassment and deprivation of the hapless other side and the necessity to put an end to such practice and observed as under:-

> *"**43.** .....unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce and valuable time is consumed or more appropriately, wasted in a large number of uncalled for cases.*
>
> *xxx xxx xxx*
>
> *47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran v. State of Punjab[(2000) 5 SCC 668: 2001 SCC (Cri) 190] this Court was constrained to observe that perjury has become a way of life in our courts."*
>
> *(Emphasis supplied)*

25.4. In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria,** (2012) 5 SCC 370, the Supreme Court observed that false claims and defences are serious problems. The Supreme Court held as

under: -

> "***False claims and false defences***
>
> *81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.*

25.5. In **Dalip Singh v. State of U.P.,** (2010) 2 SCC 114, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

> *"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*
>
> *2.* ***In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the***

challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."
(Emphasis supplied)

25.6. In the recent case of ***Subrata Roy Sahara* v. *Union of India,*** (2014) 8 SCC 470, J.S. Khehar, J. observed that the Indian judicial system is grossly afflicted with frivolous litigation. Relevant portion of the said judgment is as under:

"188. The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants.

191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent

sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?...

xxx *xxx* *xxx*

193. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. In private litigation as well, the concerned litigant would continue to approach the higher Court, despite the fact that he had lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigant's perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise.

194. ***Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. ...***

(Emphasis supplied)

25.7. In **Satyender Singh v. Gulab Singh,** 2012 (129) DRJ 128, the

Division Bench of this Court following **Dalip Singh v. State of U.P.** (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-

> "2. *As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries.* ***In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.*** *Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."*
>
> *(Emphasis supplied)*

25.8. This is a classic case in which the Licensee instituted a frivolous suit in the year 1995 to challenge the terms of the licence deed relating to the payment of licence fee to NDMC and succeeded in obtaining an interim order. The Licensee did not lead any evidence despite number of opportunities granted and therefore, the evidence was closed as back as on 10th April, 2002 and the case was listed for final arguments. However, the Licensee did not let the Court to proceed with the final arguments and kept on filing one frivolous

application after the other and in this manner, the Licensee dragged the suit for more than 18 years. In the meantime, the NDMC's claims of licence fee which was to the tune of Rs.3.5 crores in 1995 have crossed more than Rs.100 crores. The Licensee's suit was clearly barred by well settled law. However, the Licensee misled the learned Trial Court and succeeded in obtaining the impugned judgment in utter disregard of the well settled law and thereby avoided the liability of more than Rs.100 crores.

26. **Imposition of Costs**

26.1. In ***Ramrameshwari Devi* v. *Nirmala Devi***, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

> "43. .....We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.
>
> 52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.
>
> xxx xxx xxx
>
> **C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling**

the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

(Emphasis supplied)

26.2. In ***Maria Margarida Sequeria Fernandes*** **v.** ***Erasmo Jack de Sequeria*** (2012) 5 SCC 370, the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and

defences as under:-

> *"85. This Court in a recent judgment in Ramrameshwari Devi (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties.* ***In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings****."*
>
> *(Emphasis supplied)*

26.3. In ***Subrata Roy Sahara v. Union of India*** (2014) 8 SCC 470, the Supreme Court again held that costs must be imposed on frivolous litigation:

> *"191.* ***The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims****. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings)*

worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault?

(Emphasis Supplied)

26.4. In ***Harish Relan v. Kaushal Kumari Relan & Ors.*** in RFA(OS) 162/2014 decided on 03rd August, 2015, the Division Bench of this Court considered the pronouncements of the Supreme Court with respect to false claims as well as costs and held that there is no limitation on the imposition of costs by the Courts in appeals. Relevant portion of the said judgment is as under.

> ***"88.*** *It is important to note that Section 35A has no application to appeal or revision proceedings. Given the fact that this court is adjudicating an appeal assailing the judgment passed in exercise of original jurisdiction. Therefore, the jurisdiction of this court to impose costs by virtue of Section 35 of the CPC is unhindered by the limitation contained in Section 35A.*
>
> *xxx xxx xxx*
>
> ***95.*** *On the issue of costs, Sections 35, 35A, 35B as well as Order XXA and Order XXIII of the Code of Civil Procedure apply to civil suits alone. There is no statutory provision even providing for imposition of costs, let alone restricting the exercise the power to do so in appellate jurisdiction. We also find that even under the Delhi High Court Rules, 1967 only, the manner in which counsel's fee may be computed in the appeal against the decree on the original side, is provided. There is no provision in the Delhi High Court Rules as to the manner in which the costs in appeals are to be evaluated or imposed. Guidance on the consideration by this court would therefore, be taken from the principles laid down in the several precedents by the Supreme Court of India. There is therefore, no limitation by statute or the Rules at all on the appellate court to impose actual, reasonable costs on the losing party at all.*
>
> *Orders under Section 151 CPC for abuse of process of the court*

(118)

> ***96.*** *It is also necessary to advert to the power of the court under Section 151 of the CPC. This statutory provision specifically states that "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court". The spirit, object and intendment of the statutory provisions, as well as statutory scheme shows, that the inherent powers of the court are complementary to the powers specifically conferred on the court by the Code, and are in addition thereto. While Section 35A is confined to award of compensatory costs in respect of "false or vexatious claims or defences", Section 151 takes within its ambit a much wider area of litigation which tantamounts to abuse of process of court. Section 151 therefore, enables a court to pass orders as may be necessary for the ends of justice, or to "prevent abuse of process of the court" which is beyond the "false and vexatious" litigation covered under Section 35A and are wide enough to enable the court to pass orders for full restitution."*
>
> *(Emphasis supplied)*

26.5. In ***Padmawati*** **v.** ***Harijan Sewak Sangh*****, 154 (2008) DLT 411,** this Court imposed cost of Rs. 15.1 lakhs and noted as under:

> *"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation.* ***You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.***

7. ... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No. 1 and which comes to Rs. 14,60,000/- apart from litigation expenses and Counsel's fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs. 15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.

***9.** Before parting with this case, I consider it necessary to pen down that **one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.**"*

(Emphasis supplied)

Padmawati's challenge in the Supreme Court by way of a Special Leave Petition was dismissed by an order reported at ***(2012) 6***

SCC 460, Padmawati v. Harijan Sewak Sangh & Ors.

27. ***Conduct of Licensee***

27.1. The Licensee instituted the suit for declaration, mandatory and permanent injunction on 28th February, 1995 in which the notice was issued to NDMC on 01st March, 1995. The pleadings were completed in September, 1996 and the parties were directed to file original documents on 16th September 1996; 29th May, 1995; 11th September, 1997 and lastly on 19th January, 1998. The documents were finally filed on 02nd September, 1998.

27.2. The case was listed for admission/denial of documents on 22nd May, 1998 and 15th July, 1998. The admission/denial of the Licensee's documents was carried out on 02nd September, 1998. On 05th October, 1998, the Licensee sought time to file more documents whereupon the case was adjourned to 11th January, 1999 and then to 08th April, 1999.

27.3. Issues were framed on 02nd November, 1999 and the case remained pending for filing of additional documents from 14th January, 2000 to 28th August, 2000 when the parties submitted that no additional documents were required to be filed. The suit was listed for trial from 19th to 22nd February, 2002.

27.4. ***Interim orders***

The Licensee filed an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure in the suit for restraining the Licensor from interfering, obstructing or effecting the supply of water and electricity to the suit premises in which vide order dated 07th march,

1995, this Court restrained the licensor from disconnecting the electricity and water supply to the suit premises. NDMC challenged this order before the Division Bench, in which vide order dated 19th May, 1995, the Division bench directed the Licensee to pay 50% of the outstanding licence fee of Rs. 3,40,97,015/- for the period 1987 to 1995 and furnish bank guarantee for the balance 50% of the amount. The Licensee challenged this order before the Supreme Court. The Supreme Court vide order dated 24th July, 1995 in SLP (Civil) No. 14078-14079/95 modified the order of the Division Bench and directed the Licensee to furnish bank guarantee for 50% of the outstanding amount and deposit 1/4th of the outstanding amount within 2 months and balance 1/4th amount in two instalments.

27.5. ***First application for amendment of the plaint***

On 08th February, 2002, the Licensee filed an application for amendment of the plaint which was dismissed by this Court vide order dated 18th February, 2002. The Licensee challenged the order dated 18th February, 2002 before the Division Bench. The appeal was allowed. However, the Division Bench directed that the evidence shall not be held up. The Court fixed the case for recording of the evidence on 03rd April, 2002. The case was taken up on 04th April, 2002 and again on 08th April, 2002 when the Licensee did not produce any evidence.

27.6. ***Licensee did not lead any oral evidence***

27.6.1. Vide order dated 10th April, 2002, the Court closed the Licensee's evidence on the ground that the Licensee was bent upon to

frustrate the endeavor to record evidence and was resorting to dilatory tactics. This Court further observed that the Licensee has made all efforts to postpone the evidence of the witness in the trial on one pretext or the other.

27.6.2. The Licensee challenged the order dated 10th April, 2002 before the Division Bench, which was taken up on 06th May, 2002 when the Licensee made a statement before the Division Bench that the Licensee will not lead any oral evidence if the amended licence deeds of Bharat Hotel Limited, Sunair Hotel Limited, CJ International Hotel Limited and Indian Hotels Ltd were filed by NDMC. NDMC agreed to produce the same whereupon the appeal was dismissed.

27.6.3. On 13th May, 2002, the NDMC made a statement that since the Licensee has not led any evidence, NDMC does not wish to lead any evidence and the case was listed for final arguments on 26th July, 2002.

27.7. ***Fresh representation by the Licensee considered by NDMC during the pendency of the suit***

27.7.1. On 10th September, 2002, during the course of final arguments, this Court on Licensee's submission that NDMC has not considered their representation, permitted the Licensee to make a fresh representation to NDMC and the Chairperson of NDMC was directed to give a personal hearing to the Licensee and decide the representation within eight weeks.

27.7.2. On 20th September, 2002, the Licensee made a fresh representation to the NDMC in terms of the order dated 10th

(123)

September, 2002 which was considered by the NDMC and rejected vide order dated 31st March, 2003. The relevant portion of the order dated 31st March, 2003 is reproduced hereunder:

"8. (i)The land in question was allotted to M/s PSJ Enterprises on the basis of a public tender by accepting the highest bid offered by the said company. M/s Prominent Hotels Ltd. was formed in accordance with the permission granted to the company as per Clause 22. They also agreed to abide by the terms and conditions of the original licence deed by executing fresh licence deed, dated 16-07-1982.

9. (i)The Licensee on the one hand raised construction and started running a Hotel instead of a Youth Hostel and on the other hand they started committing default in making the payment of licence fee from the very beginning. They were granted indulgence in making the payment of licence fee in installments by granting moratorium. Installments were also granted subsequently. They are still in arrears of licence fee and interest on defaulted payments besides electricity charges. Amount of licence fee payable by them to NDMC calculated on the basis of last balance sheet submitted for the period ending 31-05-2000 by them works out to Rs.22,55,91,659/-, as per the following detail:-

i)	*Arrears of licence fee*	*Rs.11,65,32,058/-*
ii)	*Interest*	*Rs.10,90,59,601/-*
iii)	***Total of dues upto 31-05-2000***	***Rs.22,55,91,659/-***

They will have to pay much more on up to date statement of accounts based on gross turnover as are made available by the Hotel. Besides they are also indebted to pay a huge amount towards electricity charges.

(ii) The licence fee is payable as per the bid given by them. NDMC is not claiming or charging from them any other amount except the amount as agreed to between NDMC. Reference to the licence fee charged from other hotels as a

ground of discrimination is again of no consequence because licence fee determined is again of no consequence because licence fee determined in other cases was also on the basis of public tender. Thus fixing licence fee was not in the hand of NDMC. NDMC only followed the dictates of Section 141(2) of NDMC Act, which is the only fairest way to deal with public properties.

(iii) Moreover, the case of the company in hand was different than other hotels, which are 5 Star Hotels. The land allotted to them was for constructing five star Hotels, while in the case of the Company, the licence was for setting up a Youth Hostel. It was not meant for running a 4 Star Hotel, for which the property is being used. This is violative of the terms of the licence deed and may result if imposition of penalty by L & DO.

(iv) Coming to the issue of FAR, it was provided for as per the norms available for construction of Youth Hostel. Merely because the licencee misused the property by using it as a Hotel instead of Hostel, he cannot claim a higher FAR. Moreover this issue has been examined by our Chief Architect and according to his report the existing FAR of the building is, more than permissible. If FAR available to hotel is applied than it will increase parking space, which is not available.

10) Coming to the argument of the company that it was felt during the course of the construction itself that the project will not be viable and their reliance to the survey conducted by Indian Express, it is open for the company to surrender the premises under the terms of the licence deed. The accrued loses if any is creation of the company itself and cannot be a ground for NDMC to give up its right to claim licence fee fixed on the basis of public bid, which is as per Section 141(2) of the NDMC Act.

11) The plea taken by the company that concessions have been granted to other hotels like CJ International etc. is without any basis. The same applies to their plea about not complying with assurances by NDMC in as much as no specific thing about any such assurance, which is claimed to have been given and not met, has been stated. The case of

disinvestments can have no bearing on this case.

12) As regard representation made by the company, the same is a matter of record. The representation submitted by the Administrator of which a reference has been made must be read in full. The Administrator while giving the representation to the Hon'ble Lieutenant Governor of Delhi has also observed that in the present case, the licence fee was determined on the basis of public tender.

13) In so far as the judgment of Hon'ble Mr. Justice S.K. Mahajan delivered in the case of CJ International Hotels Ltd., the only indulgence granted was with regard to the definition of Gross Turn Over. In the same Judgment the Court upheld the right of NDMC to claim licence fee as agreed between the parties in terms of the licence deed. This Judgment has been confirmed by a division bench of Delhi High Court in its order passed on 12-03-2003 in FAO (OS) No.310/2001. The principal laid down in the said Judgement is also supported by an earlier Judgment of the Supreme Court in the case of Gursharan Singh. Thus we find no merits in the representation made by the company."

27.7.3. The Licensee filed objections to the order dated 31st March, 2003 passed by the Chairperson of NDMC before the Trial Court which were dismissed on 20th February, 2010.

27.7.4. The Licensee challenged the order dated 20th February, 2010 before this Court in CM (M) No. 365/2010 which was dismissed by this Court vide order dated 3rd June, 2010.

27.7.5. The Licensee challenged the order dated 3rd June, 2010 passed by this Court in CM (M) No. 365/2010 before the Supreme Court in SLP (Civil) No. 26036/2010 which was dismissed on 20th September, 2010.

27.8. ***Application under Order XI Rule 14 of the Code of Civil Procedure***

On 09th October, 2006, the Licensee filed an application for directing NDMC to produce the copy of the FIR/charge sheet registered against their former chairperson and for production of copy of the receipt and dispatch register. This application was partly allowed to the extent that NDMC was directed to produce the certified copy of the receipt and dispatch register. The Licensee challenged this order before this Court in C.M.(M) 393/2009, which was dismissed on 01st December, 2009. This Court observed that the Licensee had been intentionally delaying the disposal of the suit because of the interim order in its favour. This Court dismissed the petition as being baseless, dilatory and vexatious and, therefore, directed the Trial Court to dispose of the suit before 28th February, 2010. This Court also vacated the order dated 10th September, 2002 whereby the proceedings under Public Premises Act were stayed. Relevant portion of the order dated 01st December, 2009 is being reproduced hereunder:

> *" 14. It appears to this court that petitioner/plaintiff has been intentionally delaying the disposal of the suit because it has been enjoying interim orders in the suit in its favour and because it is in possession of valuable property and owing to the lackadaisical attitude of the respondent NDMC. Even though the proceedings under the Public Premises Act were stayed for the intervening period only, that is till the representation is considered, and report whereof came as far as in 2003 but it is stated that owing to the order dated 10th September, 2002 the proceedings under the Public Premises Act, also remain in abeyance.*
>
> *15. I have not been able to understand as to what*

purpose the documents, from the refusal of discovery whereof the petitioner is aggrieved, would serve in adjudicating the issues which alone are to be decided by the trail court. There can possibly be no connection. The petitioner cannot be permitted roving enquiry into the allegations against the Chairperson. The suit cannot be proceeded with as a writ petition and the aspects on which the suit has been kept pending for the last over seven years have no bearing whatsoever to the disposal of the suit.

16. Accordingly, not only is this petition dismissed as being found to be baseless, dilatory and vexatious, direction is issued to the trial court to dispose of the suit on or before 31st January, 2010. The counsel for the petitioner/plaintiff states that several interim applications are pending. However, in view of the conduct aforesaid of the petitioner/plaintiff, I am not willing to enlarge the time for disposal of the suit on the aforesaid plea. If the interim applications which are pending are as frivolous as the application from which this petition has arisen, the trial court will do well to deal with the same expeditiously. The suit be disposed of by that time.

17. It is further clarified that the order dated 10th September, 2002 staying further proceedings against the petitioner under the Public Premises Act is vacated. The counsel for the petitioner/plaintiff at this stage states that the time for disposal of the suit be extended till 28th February, 2010. Subject to the counsel for the petitioner/plaintiff fully cooperating with the trial court and not pressing frivolous applications, the time is so extended till 28th February, 2010."

27.9. *Applications under Order 27 Rule 5(B) of the Code of Civil Procedure.*

On 13th July, 2005, the Licensee filed an application before

the Trial Court for reference of the matter for amicable settlement of the disputes under Order XXVII Rule 5(B)(1) of the Code of Civil Procedure and for adjournment of the matter for at least 12 weeks. Similar application was filed on 01st May, 2006. Both these applications were dismissed.

27.10. ***Second application for amendment of the plaint***

27.10.1. On 01st May, 2006, the Licensee filed second application for amendment of the plaint to incorporate that the licence was irrevocable under Section 60(b) of the Easements Act as the Licensee had constructed permanent structure on the land.

27.10.2. Vide order dated 07th October, 2009, the Trial Court dismissed the application on the ground that the suit was pending since 01st March, 1985, the evidence had been closed as back as on 10th April, 2002 and no explanation had been given for filing the application at such a belated stage. The Trial Court further observed that the proposed amendment was a legal plea.

27.10.3. The Licensee challenged this order by filing C.M.(M) 1392/2009 in which this Court, vide order dated 01st December, 2009, clarified that the Licensee would be permitted to raise the legal plea of Section 60(b) of the Easements Act but no further evidence would be led in the matter.

27.10.4. The Licensee challenged the order dated 01st December. 2009 passed by this Court in C.M.(M) No.1392/2009 before

the Supreme Court in SLP(C) No.5307/2010 which was dismissed on 30th April, 2010.

27.11. ***Application under Order I Rule 10 of the Code of Civil Procedure***

27.11.1. On 12th July, 2010, the Licensee filed an application for impleading Union of India, L&DO, Ministry of Works and Housing as parties on the ground that the land belonged to the L&DO and NDMC was not the owner of the land in question. This application was dismissed on 24th July, 2010 on various grounds, inter alia, that the Licensee is estopped from challenging the title of NDMC under Section 116 of the Evidence Act. The Trial Court further observed that the suit was pending since 1995, evidence was closed as back as in the year 2002 and the Licensee has been moving one application after the other to delay the disposal of the suit.

27.11.2. The Licensee challenged this order by C.M.(M) 984/2010, which was dismissed by this Court on 10th August, 2010. This Court observed that the application had been filed after 15 years of the filing of the suit at the stage of the final arguments just to delay the trial and is gross abuse and misuse of the process of law. This Court further observed that the Licensee, who was enjoying the suit property for 30 years, cannot be allowed to raise an objection after 30 years. The relevant portion of the judgment dated 10th August, 2010 is reproduced hereunder:

"1. Recently Supreme Court observed that "wheels of justice are moving too slowly." Present petition is also a classic example of the above observations. After 15 years of long journey when a civil suit is going to reach its ultimate destination, the petitioner is not keen to end the journey. Now petitioner wants to change the track and is keen to get new parties impleaded to this litigation against whom earlier no relief was sought during the entire period of 15 years. It would be pertinent to point out that two deadlines given by this Court to the trial court to decide the matter in a time bound frame, have already expired....

xxx xxx xxx

25. In the entire suit, petitioner nowhere claimed that property in question vests with Government of India. Petitioner has claimed reliefs against respondent alone. Moreover, there is no privity of contract at all between petitioner and any of the proposed parties sought to be impleaded CM (M) No.981/2010 Page 12 of 14 in the suit. After enjoying the property for more than thirty years on the basis of licence granted by respondent and having entered with fresh licence deed in the year 1982 and after fighting this litigation for 15 years, now petitioner has suddenly woken up and is trying to repudiate those very documents on the basis of which petitioner had been enjoying the fruits of licence/lease deed for about last thirty years. Petitioner cannot be permitted to blow hot and cold at the same moment.

xxx xxx xxx

27. As observed by trial court also the present application under Order 1 Rule 10 of the Code is highly belated one and has been filed after 15 years after filing of the suit when the matter is listed for final arguments. The only purpose of the petitioner in filing of this application is just to delay the trial and nothing more.

28. Under these circumstances, this application is nothing but gross abuse of the provisions of law. The order passed by learned trial court would not call for

(131)

any interference since there is no ambiguity, illegality or irrationality in the impugned order."

(Emphasis Supplied)

27.12. ***Third application for amendment of the plaint***

27.12.1. On 03rd October, 2012, the Licensee filed third application for amendment of the plaint to challenge Clauses 12, 13,14, 20(iv), 20(v) and 20(vi) as onerous. The Licensee further sought to incorporate the interpretation of term "gross turnover". The Licensee also sought permission to incorporate alternative prayer for reduction of licence fee from 23% to such percentage as considered just and fair after comparing with other hotels. The Licensee also sought further alternative prayer to define "gross turnover" in Clause 3 of the licence deed to mean as turnover only in respect of room tariff and not to include revenues from other services/incomes/revenues including from food and beverages.

27.12.2. The proviso to Order VI Rule 17 of the Code of Civil Procedure bars the amendment of pleadings after commencement of trial unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. However, despite that bar, the Trial Court allowed the application vide order dated 06th December, 2012.

27.12.3. NDMC challenged order dated 06th December, 2012 before this Court by C.M.(M) 91/2013 in which this Court while

setting aside the order, permitted the Licensee to raise the legal pleas at the time of final arguments and no further evidence would be led by the parties. This Court further directed the final arguments to be completed within a period of two months.

27.13. The conduct of the Licensee shows that the Licensee delayed the trial by moving one application after the other. The reason is clear that the Licensee had an interim order in its favour. The Licensee succeeded in delaying the litigation for more than 18 years and 170 hearings took place.

27.14. The basic obligation of the litigant is not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal arguments and other submissions to the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the litigant. He is bound not to make any statements which are inaccurate, untrue and misleading. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows to be contrary to the law. The conduct of the Licensee shows that the Licensee failed to discharge any of the above obligations.

27.15. This Court is of the view that the Licensee misled the Trial Court to pass the impugned judgment contrary to the well settled law and thereby abused the process of law. The Licensee's conduct to mislead the Court has caused most mischievous consequence to the administration of justice i.e. namely abuse of the process of Court.

The Licensee has attempted to impede or undermine or obstruct the free flow of the holy stream of justice, which has caused serious damage to the institution. The law does not require the Court to sit back with folded hands and fail to take any action in the matter.

28.***Does it constitute criminal contempt?***

28.1. Criminal contempt of court under Section 2(c) of the Contempt of Courts Act 1971 reads as under:

> *"Section 2(c) - criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-*
>
> *(i) scandalises, or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
>
> *(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
>
> *(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"*

28.2. In ***Dhananjay Sharma v. State of Haryana,*** (1995) 3 SCC 757, the Supreme Court observed:

> *"38... **any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt.** The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. **Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the***

filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law..."

(Emphasis supplied)

28.3. In ***Afzal v. State of Haryana*** : (1996) 7 SCC 397, the Supreme Court held as under:

> *"32 ... Section 2(b) defines "contempt of court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner.* ***A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings****. ... He first used fabricated counter-affidavit, forged by Krishan Kumar in the proceedings to obtain a favourable order. But when he perceived atmosphere adverse to him, he fabricated further false evidence and sought to use an affidavit evidence to show that Krishan Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he committed contempt of court by making false statements. Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements. Thereby, he committed criminal contempt of judicial proceedings of this Court."*
>
> *(Emphasis supplied)*

28.4. In ***Rita Markandey v. Surjit Singh Arora*** (1996) 6 SCC 14, the

Supreme Court observed under:-

> *"14 ... by filing false affidavits the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We, therefore, hold the respondent guilty of criminal contempt of court."*

28.5. In ***Murray & Co. v. Ashok Kumar Newatia*** (2000) 2 SCC 367, the Supreme Court held as under:

> *"24 ... but there is no dispute as such on the factum of a false and fabricated statement finding its place in the affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such. Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. The learned Advocate appearing for the respondent made a frantic bid to contend that the statement has been made without releasing the purport of the same. We are, however, not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere denial of fact but a positive assertion and as such made with definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a Court should always be deprecated and we do hereby record the same. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court in our view, would be failing in its duties, if the matter in question is not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. ..."*

28.6. In ***Re: Bineet Kumar Singh*** (2001) 5 SCC 501, the Supreme Court held as under:

> *"6. ...Criminal Contempt has been defined in Section 2(c) to mean interference with the administration of justice in any*

*manner. **A false or misleading or a wrong statement deliberately and wilfully made by party to the proceedings to obtain a favourable order would undoubtedly tantamount to interfere with the due course of judicial proceedings**. When a person is found to have utilised an order of a Court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself is the author of fabrication..."*

(Emphasis supplied)

28.7. In ***Chandra Shashi v. Anil Kumar Verma*** (1995) 1 SCC 421, the Supreme Court held as under:

"2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice..."

*7. There being no decision of this Court (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. **Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure ... ... so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples**.*

***8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail**.*

9. ... The word 'interfere', means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty ... ... obstruction of

justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.
14... if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large."

(Emphasis supplied)

28.8. In ***Rajeev Kumar v. State of U.P.*** 2006 (1) AWC 34, the Court held as under:

"45. In view of the above, we are of the considered opinion that as the petitioners filed a forged document purporting to be an agreement reached on behalf of respondent nos. 6 to 8 (Annex.2), and filed the petition totally on false averments in order to mislead the Court to obtain a favourable order, they are liable to be tried for committing criminal contempt and are further liable to be dealt with heavy hands."

28.9. In ***Cyril D'souza v. Ponkra Mugera*** 1998 (1) KarLJ 659, the Court held as under:

"6 ... Instead, this petition appears to be an attempt of the petitioner to procure some order from the Court on the basis of an agreement which prima facie appears to be an ante-dated document prepared after that date and it prima facie shows that a false document has been filed with false allegations.... Filing a false affidavit and filing forged document, as per law laid down by the Supreme Court is nothing but an act illegal, interfering with the proper administration of justice and it

prima facie makes out a case for contempt.
7. In this view of the matter, I think this Court should take necessary steps and issue notice to the petitioner as well as respondent 1, to show-cause why this Court should not take action for contempt and punish them for having committed contempt of this Court."

28.10.In ***Vijay Enterprises v. Gopinath Mahade Koli*** 2006 (4) BOMCR 701, the Court held as under:

*"6 ... **It is needless to state that justice delivery system has to be pure and should be such that the persons who are approaching the Courts and filing the proceedings must be afraid of using fabricated documents and also of making false statements on oath. We are a Court of Law sitting here to ascertain the truth and give justice in accordance the law to establish truth and not being misled by the advocates and the parties in the various directions so as to make it almost impossible to give effective and truthful justice to the litigants at large**. In my opinion keeping in mind the aforesaid position it is high time that where the people have blatantly used the fabricated document for the purpose of achieving the desired result even by misleading the Court and / or by making false statement and by using fabricated documents cannot escape the penalties. This is an unfortunate case before me where the persons who have used the certificate are illiterate. There are people who are behind them are powerful. But they are taking shelter behind the fact that the certificate has been brought to them by those illiterate persons. In spite of the aforesaid it has been established on the record not only the three persons have obtained the fabricated document but the builder and brokers and the lawyer have all conscientiously utilised the said certificate knowing fully well that the said certificate is fabricated. Firstly because all of them knew that there are two certificates produced one bearing No. 15 and another bearing No. 98. The builder, the brokers and the lawyer not being literate and having resources before entering into the agreement and filing the proceedings in the Court ought to*

have ascertained and verified the veracity of the said document. But admittedly they have not done so before using the said document in the Court proceedings. This is not a mere lapse but the fact is that the fabricated document has been consciously used by the said persons. In that light of the matter, I am of the opinion that each of the aforesaid persons are guilty of using fabricated document in the Court proceedings and are consequently guilty of contempt of court. I am also of the opinion that utilising the fabricated document in the court proceedings amounts to interference with the administration of justice and thus attracts the liability of contempt. In effect, it is the builder and the brokers who have been on investigation found to be the real persons in moving an application through an illiterate person Mahadu Lakhama Kakade to utilise the said certificate. Though the application was in the name of Mahadu Lakhma Kakade, in fact by virtue of the joint development agreement the real beneficiary was Manoj Kumar Devadiga as he was entitled to develop the said property. I am of the view that this is a fit case where action must be taken ..."

(Emphasis supplied)

28.11.In ***Gautam Chand Chopada v. Mahendra Kumar Pukhraj Kothari***, Criminal Revision Application Nos. 153 and 154 of 2008 and Criminal Application Nos. 154 and 155 of 2008 decided by the Bombay High Court on 22.07.2008, the Court held as under:

"34. The reading of the aforesaid letter written by Nandini Hospital under the signature of Dr. D.B. Goyal goes to show that the accused-applicant Mr. Gautam Chopada was never admitted in the said Hospital. This factual matrix goes to show that Mr. Gautam Chopada tried to mislead this Court by producing a false and fabricated document and thereby interfered with administration of justice. He also tried to play fraud on this Court.

36. In the factual scenario drawn hereinabove, I am of the view that filing of the fabricated, bogus and false document before this Court, prima facie amounts to contempt of this Court since

it had interfered with the administration of justice."

28.12. In ***State of A.P. v. Mandalupu Ramaiah*** 2003 (6) Andhra Law Digest 190, the Court held as under:

> *"42. In this case also, the contemnor produced the alleged order of the Government dated 11.10.2002 which was found to be a fabricated one and the very fact itself will amount to Criminal Contempt of Court.*
> *52. Now coming to the quantum of punishment to be given we have thought over the problem with all the seriousness that is required in the matter and we feel that* ***unless lawlessness which is all pervasive in the society is not put an end with an iron hand the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the contemnor is allowed to go scot free every law breaker violates the law with immunity and tenders apology in the Court. After leaving the Court he will laugh at the system. Hence, deterrent action requires to uphold the majesty of law****. Hence, we are not inclined to take any lenient view in the matter since undue sympathy or inadequate sentence to the accused would undermine public confidence in the efficacy of law and society.*
> *53. Hence, we are of the view that the contemnor shall be given maximum punishment in exercise of the inherent jurisdiction vested in this Court under Article 215 of the Constitution of India read with Section12 of the Contempt of Courts Act.*
> *54. In the result, we convict the contemnor under Section 12 of the Contempt of Courts Act and sentence him to undergo simple imprisonment for a period of six months and to pay a fine of `` 2,000/-(Rupees two thousand only) within two weeks from the date of receipt of the order. ... "*
>
> *(Emphasis supplied)*

28.13. In ***Vidyadhar Govind Patwardhan v. Aravind Shreedhar Ghatpande*** 1990 (3) Bombay High Court Reports 567, the Court held:

> *"4 ... While granting interim, reliefs, Courts have to be careful*

and no cock and bull story entitles the author of that story to interim relief though in a sense even such stories may require to be listened to. The 1st respondent had committed contempt by the institution of the suit which is based on patently false averments and deserves to be dealt with therefore. ..."

28.14. This Court is of the view that the Licensee instituted a frivolous suit to challenge the terms of the licence deed dated 16th July, 1982 which was barred by well settled law. The Licensee misled the Trial Court in pursuance of which the learned Trial Court declared the clause 3 of the licence deed as arbitrary, discriminatory, unreasonable, unjust, unconscionable, unlawful, null and void *ab initio* in utter disregard to the well settled law. However, the licensee could not support the aforesaid declaration before this Court and conceded at the time of final hearing that the declaration granted by the Trial Court be set aside. With respect to prayer (ii), there was no cause of action in favour of the Licensee. Prayers (iii) and (iv) of the suit relating to the termination of the licence by NDMC are clearly barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. However, the licensee succeeded in misleading the Trial Court to obtain a decree in respect of prayers (iii) and (iv) in utter violation of the law. The learned Trial Court had no jurisdiction, either pecuniary or of subject matter, to entertain and try the suit. The learned Trial Court exercised the jurisdiction not vested in it and not only allowed of the prayers made in the suit but proceeded to award the prayers not even made in the plaint. The learned Trial Court set aside the termination notice dated 21st February, 1995 although there was no prayer made in the plaint in that regard. The learned Trial

Court further proceeded to interpret the term 'Gross turnover' in respect of which there were no pleadings or prayer in the plaint and the amendment sought by the Licensee at the stage of final hearing to incorporate the same was not allowed. The impugned judgment clearly shows that the licensee has misled the Court to obtain a judgment contrary to law. Filing of a frivolous suit, dragging it for 18 years and misleading the Court amounts to Contempt of Court.

29. ***Summary of the principles of law***

29.1. In contracts entered into pursuant to public auction or tender, commercial difficulty cannot provide justification for not complying with the terms of the contract. There is no question of state power being involved in such contracts as there is no compulsion on anyone to enter into these contracts.

29.2. If a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approbates cannot reprobate).

29.3. In commercial contracts entered into with open eyes, there cannot be variation to the terms of a concluded contract which has already been acted upon and the parties are estopped from challenging the terms and conditions of the contract.

29.4. The state has no responsibility to ensure profit to everyone it contracts with. Profit and loss are normal incidents of a business. There is no room for invoking the doctrine of unjust enrichment in

such cases.

29.5. Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of the eviction of any person, who is in unauthorised occupation of the public premises as well as for recovery of arrears of rent, damages and interest payable by such person.

29.6. Section 60 of the Easements Act, 1882 in not exhaustive and the parties can stipulate a licence to be revocable. The construction of a permanent structure in case of revocable licence would also not make the licence irrevocable.

29.7. The suit for declaration and injunction, for the purposes of Court fees and jurisdiction, has to be valued on the basis of the amount involved.

29.8. The law declared by the Supreme Court and High Courts of the States is binding on Trial Courts. The failure to abide by the principles laid down by the Supreme Court as well as this Court in binding judicial precedents amounts to contempt.

29.9. Justice is truth in action. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system.

29.10. It is the duty of the Judge to discover truth to do complete justice. The entire judicial system has been created only to discern and find out the real truth.

29.11. The justice based on truth would establish peace in the society. For the common man truth and justice are synonymous. So when truth

fails, justice fails. People would have faith in Courts when truth alone triumphs.

29.12.Every trial is a voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. Judge has to play an active role to discover truth and he should explore all avenues open to him in order to discover the truth.

29.13.Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

29.14.Unless the Courts ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they

lose, the time gained is the real gain. This situation must be redeemed by the Courts.

29.15. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution.

29.16. Any conduct which has the tendency to interfere with the administration of justice amounts to criminal contempt. A false, misleading or a wrong statement deliberately and willfully made by party to the proceedings to obtain a favourable order would undoubtedly tantamount to interference with the due course of judicial proceedings.

29.17. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against the Contemnor, but also to keep the stream of justice clear and pure so that the parties who approach the Court to receive justice do

not have to wade through dirty and polluted water.

29.18.To enable the Court to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail.

29.19.Unless lawlessness which is all pervasive in the society is not put to an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the contemnor is allowed to go scot free, every law breaker would violate the law with impunity. Hence, deterrent action is required to uphold the majesty of law.

30.**Conclusion**

Prayer (i) of the suit is barred by law

30.1. Prayer (i) of the suit seeking declaration of clause 3 of the licence deed dated 16th July, 1982 as null and void *ab initio,* is barred by well settled law laid down by the Supreme Court in ***Alopi Parshad v. Union of India,*** (supra), ***Panna Lal v. State of Rajasthan***(supra), ***State of Haryana v. Jage Ram*** *(supra),* ***New Bihar Leaves Co. v. State of Bihar*** *(supra),* ***Assistant Excise Commissioner v. Issac Peter*** (supra), ***Puravankara Projects Ltd. v. Hotel Venus International*** (supra), ***Bharti Cellular Limited v. Union of India*** (supra); and this Court in ***Track Innovations India Pvt. Ltd. v. Union Of India*** (supra); and ***C.J. International Hotels Ltd. v. N.D.M.C.***(supra).

30.2. Following the aforesaid judgments, I hold that the suit with

respect to prayer (i) was not maintainable and therefore, the Trial Court had no jurisdiction to pass the decree of declaration.

30.3. The Licensee misled the Trial Court to disregard the well settled law and pass a decree of declaration declaring clause No.3 of the licence deed dated 16th July, 1982 as arbitrary, discriminatory, unreasonable, unjust, unconscionable, unlawful, null and void *ab initio*.

30.4. The decree of declaration passed by the Trial Court declaring clause 3 of the licence deed as arbitrary, discriminatory, unreasonable, unjust, unconscionable, unlawful, null and void *ab initio*, is hereby set aside.

Prayer (ii) of the suit not maintainable for want of cause of action

30.5. With respect to prayer (ii) of the suit seeking mandatory injunction for increase of FAR from 100 to 250, there was no cause of action in favour of Licensee and against the NDMC. Clause 12 of the licence deed dated 16th July, 1982 provides for increase of licence fee upon payment of increased licence fee. However, since the Licensee has never applied for increase of licence fee for seeking increase of FAR, there was no cause of action for the Licensee to claim increased FAR. Even now, the Licensee is not prepared to pay the licence fee in terms of the licence deed.

30.6. The suit with respect to prayer (ii) was not maintainable and therefore, the Trial Court had no jurisdiction to pass a decree of mandatory injunction.

30.7. The Licensee misled the Trial Court to pass a decree for mandatory injunction whereas there was no cause of action in favour

of the Licensee to seek such a relief.

30.8. The decree of mandatory injunction passed by the Trial Court directing the NDMC to increase the FAR as permissible in terms of Zonal Plan to the Licensee, is hereby set aside.

Prayers (iii) & (iv) of the suit barred by Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

30.9. Prayers (iii) and (iv) of the suit for restraining NDMC from re-entering the suit property, taking any action in pursuance of order of cancellation dated 21st February, 2015 and for restraining them from disconnecting electricity, water and other amenities are clearly barred by Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

30.10. The suit with respect to prayers (iii) and (iv) was not maintainable and therefore, the Trial Court had no jurisdiction to entertain and try the suit.

30.11. The Licensee misled the Trial Court to disregard Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to pass a decree restraining the NDMC from re-entering the suit property and taking any action in pursuance of order of cancellation dated 21st February, 1995 and for restraining them from disconnecting electricity, water and other amenities.

30.12. The decree of permanent injunction passed by the Trial Court is hereby set aside.

Licence deed dated 16th July, 1982 is revocable and Section 60(b) is not applicable

30.13. The licence deed dated 16th July, 1982 is revocable in view of

(149)

specific clauses 1, 9, 10, 11, 18, 19, 20(xii), 21(b), 31, 47 and 48 of the licence deed dated 16th July, 1982. Clause 9 of the agreement authorizes and empowers the licensor to revoke the licence in the event of the Licensee failing to make the payment of licence fee and the interest due thereupon or any other payment due against the Licensee for any reason whatsoever and to take the possession of the licence premises by recourse to the law as provided in the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Clause 10 of the licence deed stipulates that the land for construction and youth hostel would continue to vest in the licensor in whom the building so constructed shall also vest. Clause 11 provides for termination for breach of any terms and conditions of the licence deed. Clause 20(xii) of the licence deed stipulates that the Licensee is not liable to pay house tax on the land and building as the same vest in the licensor for all intents and purposes. Clause 21(b) of the licence deed also empowers the NDMC to re-enter upon the land and building in the event of any breach or default of the performance of the licence deed. Clause 29 provides that the building to be constructed by the Licensee shall at all time vest in the Licensor together with all fittings, fixtures and other installations. Clause 31 of the agreement further makes it clear that the allotment is made on licence basis and the licenced premises including building to be constructed will be a public premises within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act 1971. Clauses 47 and 48 empower the Licensor to terminate and revoke the licence in the event of the breach of the terms of the licence deed.

(150)

30.14. Section 60(b) of the Easements Act would not apply to revocable licence as held in ***Ram Sarup Gupta v. Bishun Narain Inter College*** (supra); ***Mumbai International Airport Private Limited v. Golden Chariot Airport*** (supra); ***B.K. Bhagat v. New Delhi Municipal Council*** (supra); ***Bhagwauna v. Sheikh Anwaruzzaman*** (supra) and ***State of Madhya Pradesh v. Abdul Rahim Khan***, 1974 MPLJ 7767 (8).

30.15. Following the aforesaid judgments, I hold the licence deed dated 16th July, 1982 to be revocable. The Licensee's claim that the licence is irrevocable under Section 60(b) of the Easements Act is rejected.

30.16. The Licensee misled the Trial Court to disregard well settled law and hold the licence as irrevocable under Section 60(b) of the Easements Act.

30.17. The finding of the Trial Court holding the licence irrevocable is hereby set aside.

Setting aside of the cancellation notice dated 21st February, 1995 by the Trial Court without jurisdiction

30.18. The Trial Court had no jurisdiction to set aside the cancellation notice dated 21st February, 1995 as there were no pleadings, no prayer was made in the plaint, no issue was framed and no evidence was led by the parties. The Court could not have travelled beyond the pleadings as held by the Supreme Court in ***Union of India v. Ibrahim Uddin***, (2012) 8 SCC 148. That apart, the Trial Court could not have granted such a relief in view of the bar of Section 15 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The

finding of the Trial Court is set aside as perverse and beyond jurisdiction.

Interpretation of the term 'Gross turnover' by the Trial Court is without jurisdiction.

30.19. The findings of the Trial Court with respect to the interpretation of the term 'Gross turnover' are beyond the pleadings and evidence before the Trial Court. On 03rd October, 2012, the Licensee filed an application for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure to incorporate the new plea of meaning of the term 'Gross turnover', which was allowed by the Trial Court on 06th December, 2012, but set aside by this Court vide order dated 12th September, 2013 in CM(M) No.91/2013. However, this Court permitted the Licensee to only take the legal pleas at the time of arguments. As such, there were no pleadings or evidence before the Trial Court with respect to the meaning of term 'Gross turnover'. Despite that the Trial Court considered the averments made in the amendment application to interpret 'Gross turnover'. The findings of the Trial Court with respect to interpretation of the term 'Gross turnover' are perverse and therefore, set aside. Even otherwise, there is no merit in the Licensee's contention as NDMC has adopted the 'Gross Turnover' determined by the Licensee in their own audited accounts in terms of clause 5 of the licence deed. The balance sheets of the Licensee for the year ending 31st March, 2014 reflect the admitted licence fee of Rs.35,31,52,823/- payable by the Licensee. The balance sheets further reveal that the Licensee has shown the licence fee as expenses, deducted from gross income and has thereby

derived the tax benefits from the Income Tax authorities.

(152)

Suit not valued properly for Court fees and jurisdiction and Trial Court had no jurisdiction to entertain the suit

30.20. The Licensee has not valued the suit properly for the purposes of Court fees and jurisdiction. The Licensee was required to value the suit for the purposes of Court fees and jurisdiction at Rs.3,05,67,355.20/- and as per the said valuation, the Trial Court had no pecuniary jurisdiction to entertain and try the suit.

30.21. This case is squarely covered by the principles laid down in ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India***, AIR 1975 Delhi 270, ***Rampur Distillery and Chemicals Co. Ltd. v. Union of India,*** 1995 (57) DLT 642, ***M/s Maharaji Education Trust & Anr. v. Punjab & Sind Bank & Anr.***, 2006 (127) DLT 161.

30.22. The Licensee has misled the Trial Court to disregard well settled law and hold the suit to have been valued correctly for the purposes of Court fees and Jurisdiction.

30.23. The finding of the Trial Court in respect of the valuation of Court fees and jurisdiction is hereby set aside.

Licensee did not prove the authority of the person to institute the suit

30.24. The Licensee did not lead any oral evidence to prove that the suit has been signed, verified and instituted by a duly authorised person. The Licensee also did not prove the resolution in favour of the person who signed and verified the plaint and, therefore, the findings of the Trial Court with respect to Issue No.3 are not correct. However, considering that the suit was not maintainable in law for the

reasons recorded in the preceding paras, this Court is not basing the dismissal of the suit on this ground.

30.25. Trial Court has completely ignored the loss to public exchequer caused by the Licensee. As of today, the Licensee is liable to pay outstanding dues of Rs.122 crores and NDMC is not able to recover the said amount because of impugned judgment and decree. After cancellation of its allotment, the Licensee became unauthorised occupant of the property and liable to pay damages @ 30% above the licence fee.

Conscious disregard of well settled law by the Licensee as well as by the Trial Court

30.26. The impugned judgement and decree is vitiated on account of conscious disregard of the well settled law by the Trial Court. The Trial Court, who was obliged to apply law and adjudicate claims according to law, is found to have thrown to winds all such basic and fundamental principles of law. The Trial Court did not even consider and apply its mind to the judgments cited by NDMC at the time of hearing. The judicial discipline demands that the Trial Court should have followed the well settled law. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected. It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. The Trial Court has dared to disregard and deliberately ignore the following judgments:–

- ***Alopi Parshad & Sons v. Union of India*** *(supra)*
- ***Panna Lal v. State of Rajasthan*** *(supra)*
- ***State Bank of Haryana v. Jage Ram*** *(supra)*
- ***Har Shankar v. Deputy Excise and Taxation Commissioner*** *(supra)*
- ***New Bihar Biri Leaves Co. v. State of Bihar*** *(supra)*,
- ***C. Bepathumma v. V.S. Kadambolithaya*** *(supra)*,
- ***Assistant Excise Commissioner v. Issac Peter*** *(supra)*,
- ***Puravankara Projects Ltd. v. Hotel Venus International*** *(supra)*,
- ***Bharti Cellular Limited v. Union of India*** *(supra)*,
- ***Mumbai International Airport Private Limited v. Golden Chariot Airport,*** *(supra)*,
- ***Track Innovations India Pvt. Ltd. v. Union Of India,*** *(supra)*,
- ***C.J. International Hotels Ltd. v. N.D.M.C.,*** *(supra)*,
- ***State of Haryana and Ors. v. Khalsa Motors Ltd.*** *(supra)*,
- ***B. Sharma Rao H. Ganeshmal and Anr. v. Head Quarters Asstt. and Ors.*** *(supra)*,
- ***Union of India v. Ibrahim Uddin*** *(supra)*
- ***Ram Sarup Gupta v. Bishun Narain Inter College*** *(supra)*
- ***Corporation of Calicut v. K Sreenivasan*** *(supra)*
- ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India*** *(supra)*
- ***Rampur Distillery and Chemicals Co. Ltd. v. Union of India*** *(supra)*
- ***M/s Maharaji Education Trust v. Punjab and Sind Bank***

(supra)

– ***Aggarwal and Modi Enterprises Pvt. Ltd. v. New Delhi Municipal Committee*** *(supra)*,

30.27.In view of the clear expression of law recorded in judgements discussed above, without any divergence of view whatsoever, I have no other alternative but to conclude that the Licensee's suit for declaration, mandatory and permanent injunction was not maintainable and it amounts to gross abuse and misuse of the process of law. The submissions advanced by learned senior counsel for the Licensee asserting the maintainability of the suit are devoid of any merit and are rejected.

30.28.The impugned judgment under challenge, stands vitiated on account of several serious errors of law, apparent on the face of it and the Trial Court not only acted arbitrarily and irrationally on a perverse understanding or misreading of the materials but also misdirected himself on the vital issues before him so as to render the impugned judgment to be one in utter disregard of law and the precedents. Although the impugned judgment purports to determine the claims of parties, a careful scrutiny of the same discloses total non-application of mind to the actual, relevant and vital aspects and issues in their proper perspective. Had there been a prudent and judicious approach, the Trial Court could not have awarded any relief whatsoever to the Licensee.

30.29.The impugned judgment is based on mere conjectures and pure hypothetical exercises, absolutely divorced from rationality and reality, inevitably making law, equity and justice, in the process, a

casualty. The impugned judgment is so perverse, arbitrary and irrational that no responsible judicial officer could have arrived at such a decision.

30.30. The impugned judgment bristles with numerous infirmities and errors of very serious nature undermining the very credibility and objectivity of the reasoning as well as the ultimate conclusions arrived at by the Trial Court. The impugned judgment has resulted in a windfall in favour of the Licensee, more as a premium for their own defaults and breaches. The Licensee has enjoyed the subject property without paying the licence fee in terms of the licence deed which has accumulated to the tune of Rs. 122 crores by virtue of the impugned judgment of the Trial Court.

30.31. The conclusions in the impugned judgment are seriously vitiated on account of gross misreading of the materials on record. Conclusions directly contrary to the indisputable facts placed on record throwing over board the well-settled norms, the basic and fundamental principle that a violator of reciprocal promises cannot be crowned with a prize for his defaults.

30.32. The conclusions arrived at by the Trial Court are nothing but sheer perversity and contradiction in terms. Even common sense, reason and ordinary prudence would commend for rejecting the claim of the Licensee.

30.33. The manner in which the Trial Court has chosen to decree the suit not only demonstrates perversity of approach, but *per se* proves flagrant violation of the principles of law. The principles of well settled law are found to have been observed more in their breach.

157

30.34. The Trial Court appears to have relied upon mere surmises and conjectures as though it constituted substantive evidence. The impugned judgment suffers from obvious and patent errors of law and facts.

30.35. The Trial Court failed in the duty and obligation to maintain purity of standards and preserve full faith and credibility in the judicial system. The impugned judgment, on the face of it, is shown to be based upon a proposition of law which is unsound and findings recorded are absurd, unreasonable and irrational.

30.36. This case warrants imposition of costs on the petitioners in terms of the judgments of the Supreme Court in ***Ramrameshwari Devi v. Nirmala Devi*** *(supra)* and ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*** *(supra)*, ***Subrata Roy Sahara v. Union of India*** *(supra)* and of this Court in ***Harish Relan v. Kaushal Kumari Relan & Ors.*** in RFA(OS) 162/2014 decided on 03rd August, 2015, ***Punjab National Bank v. Virender Prakash***, 2012 V AD (Delhi) 373 and ***Padmawati v. Harijan Sewak Sangh*** *(supra)*.

30.37. For the reasons discussed hereinabove, the appeal is allowed. The Licensee's suit was not maintainable. The Trial Court had no jurisdiction in this matter. The impugned judgment and decree are *non-est* and therefore set aside. The Licensee's suit is dismissed with costs of Rs.5,00,000/- to be paid by the Licensee to NDMC within two months. All pending applications are disposed of.

30.38. This Court is constrained to hold that the Licensee made a false claim, dragged the case for years by filing one application after the other and misled the Court on law as well as facts. The Licensee did

not pursue the proceedings honestly before the Trial Court.

30.39. The next question that arises is as to what action should be taken against the Licensee who has abused the process of the Court and has indulged in frivolous litigation which is clear from the fact that before this Court, the Licensee could not support prayer (i) of the plaint and declaration granted by the Trial Court declaring clause 3 of the licence deed as void. On 03rd August, 2015, the Licensee made a statement to give up prayer (i) of the decree granted by the Trial Court, meaning thereby, that the Licensee admitted that the impugned judgment relating to prayer (i) was not sustainable in law. It further implies that the Licensee had misled the Trial Court to pass an illegal decree. The further implication is that the dropping of prayer (i), which was the sole ground for avoiding the bar of Section 15 of the Public Premise Act, would result in the remaining suit being clearly barred by Section 15 of the Public Premises Act.

30.40. This Court strongly deprecates the manner in which the successive applications were filed just to delay the hearing of the suit. By filing one application after the other before the Trial Court, the Licensee succeeded in enjoying the possession of the premises for the last more than 18 years after the termination of the licence without paying the licence fee in terms of the licence deed. About 170 hearings took place in the suit filed by the Licensee.

30.41. The Licensee has no respect for truth and has polluted the pure fountain of justice with tainted hands. The Licensee has played tricks by delaying the proceedings before the Trial Court for more than 18 years. The Licensee has interfered with the administration of justice.

This case warrants strict action to be taken. It is a fit case for ordering inquiry or initiating proceedings for contempt of Court. However, the action against the Licensee is deferred for two weeks to enable the Licensee to introspect and file an undertaking to abide by the terms of the licence deed dated 16th July, 1982 and not to resort to any frivolous proceedings/action in future. Since this appeal is being disposed of, the Licensee shall file his undertaking before the Writ Court in WP(C) No.1629/2015. In the event of the failure of the Licensee to file such an undertaking within two weeks, NDMC is permitted to initiate proceedings for criminal contempt against the Licensee.

30.42. The Estate Officer is directed to expedite the proceedings under Section 5 and Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and endeavour to decide the same within six months. The Estate Officer shall not permit the Licensee to re-agitate the findings of this Court.

31. **Post Script**

31.1. This Court is of the view that there is need to evolve strong measures to curb the frivolous litigation pending before the Trial Courts. This case is an eye opener where the Licensee instituted a frivolous suit which was clearly barred by law, succeeded in obtaining an interim order and thereafter, the Licensee deliberately kept on delaying the suit by filing one application after the other and thereby succeeded in delaying the suit for more than 18 years. In the meantime, the Licensee's liability, increased from Rs.3.5 crores in the year 1995 to the tune of Rs.122 crores.

31.2. This Court is of the view that day to day trial should be conducted in such frivolous suits. The first thing required in this regard is to identify the frivolous cases pending before the Trial Courts. All the Courts below are, therefore, directed to initially scan the pending cases which are more than 5 years old and identify cases in which there is prima facie material to show that having secured *ad interim* order, the litigant is deliberately delaying the disposal of the suit. The Trial Courts shall also identify the cases in which there is an objection relating to the bar of the jurisdiction of the Civil Court to entertain and try the suit. The Trial Courts shall complete this exercise within two months and submit their report with respect to the particulars of such cases to the District Judge, who shall place the report (through the Registrar General of this Court) before the ACR Committee of the Trial Court judges. The Trial Court shall expedite the hearing of such cases and also submit a report with respect to the time frame required to decide those cases.

31.3. The report of the Trial Courts in respect of five year old cases shall contain the relevant particulars, namely, suit number; nature of suit; particulars of the interim order; whether any party delaying the proceedings by filing applications or otherwise; whether evidence has been concluded; how many applications have been filed in the matter; and reasons for delay in disposal.

31.4. The Registrar General shall ensure the compliance of these directions by all the Courts below. Copy of this judgment be sent to the Registrar General.

32. Considering the principles of law discussed in this judgment,

copy of this judgment be sent to the Delhi Judicial Academy. The Delhi Judicial Academy shall sensitize the judges with respect to the principles relating to the consequences for not following the well settled law.

33. Copy of this judgment be given *dasti* to both the parties.

J.R. MIDHA
(JUDGE)

SEPTEMBER 11, 2015
ak/rsk/dk

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): DELHI

No. 38579-664 Genl./J.Cir./HCS /2019 Dated, Delhi the 20 JUN 2019

Copy of the letter bearing no. 3348-60/DHC/Gaz./G-2/Judgment/2019 dated 10.06.2019 alongwith downloaded judgment/order dated *11.09.2015 in RFA No. 78/2014* and order dated 07.09.2016 passed by Hon'ble Mr. Justice J.R Midha, High Court of Delhi, New Delhi *in CM No. 32885/2016 in RFA No. 78/2014 titled "New Delhi Municipal Corporation Vs. M/s Prominent Hotels Limited* received from Hon'ble High Court of Delhi, New Delhi" is circulated for information and necessary action/ compliance to:-

1. *All the Ld. Judicial Officers, Central District, Tis Hazari Courts, Delhi.*
2. *Ld. Officer In Charge, Judicial Branch, Central District, Tis Hazari Courts, Delhi.*
3. *The Ld. Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned officials to upload the same on the Website of Delhi District Courts.*
4. *P.S to Ld. District & Sessions Judge (HQs) Tis Hazari Courts, Delhi.*
5. *Dealing Assistant, R&I Branch, for uploading the same on LAYERS.*
6. *For uploading the same on Centralized Website through LAYERS*

20-6-19

Officiating Ld. District & Sessions Judge (HQs)
Delhi

Encl.: As above.

No. 1413 **Genl./J.Cir./HCS /2019** **Dated, Delhi the** 20 JUN 2019

Copy to:

The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.

Officiating Ld. District & Sessions Judge (HQs)
Delhi